

the tribe. Decisions and determinations made under this subpart not rendered by CCC or FSA are not appealable to the National Appeals Division.

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PART 1446—PEANUTS

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Subpart A—General Provisions

§ 1446.101 General statement.

This part sets out provisions relating to the 1996 through 2002 crops of peanuts as authorized and in accordance with the applicable provisions of Public Law 104-127. The peanut marketing, storage, handling and disposition requirements for peanuts for the 1991 through 1995 crops shall continue to be governed by the regulations codified in this part 1446 as of January 1, 1996. Program announcements will be issued to specify national average support rates, and other provisions that may be required in order to implement these regulations.

[56 FR 16230, Apr. 19, 1991, as amended at 61 FR 37623, July 18, 1996]

§ 1446.102 Administration.

(a) *Responsibility.* The Tobacco and Peanuts Division (TPD), Farm Service Agency (FSA), will administer this part under the general direction and supervision of the Administrator, FSA, or the Executive Vice President, Commodity Credit Corporation (CCC), as applicable. In the field, these regulations shall be carried out by State and county Farm Service Agency (FSA) committees and marketing associations that have contracted with CCC for such purposes.

(b) *Limitation of authority.* A State or county committee or its employees or representatives, or any marketing association or its employees or representatives, may not modify or waive any of the provisions of this part or any amendment or supplement thereto.

(c) *Supervisory authority.* Delegation of authority contained in this part shall not preclude the Administrator, FSA, the Executive Vice President, CCC, or a designee of such person from determining any questions arising under the regulations or from reversing

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or modifying any determinations made pursuant to such delegation.

§ 1446.103 Definitions.

For purposes of this part, the definitions and provisions of parts 718, 719, 729, 780, 790, 791, 793, 1402, 1403, 1407, 1421, 1422 and 1498 of this title are incorporated and shall apply except where the context or subject matter or provisions of the regulations in this part otherwise requires or provides. References contained in this subpart to other parts of this chapter or title include any subsequent amendments to those referenced parts. Unless the context indicates otherwise, any reference to the Executive Vice President of CCC shall also be read to mean to any persons designated by the Executive Vice President. Unless the context or subject matter otherwise requires, the following words and phrases as used in this part and in all related instructions and documents shall have the following meanings:

Additional loan rate. The price support loan rate that is applicable to a lot of additional peanuts.

Additional peanuts. Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

Adequate assets. Assets less liabilities determined by the marketing association, acting pursuant to instructions of CCC, to be sufficient to assure the export or crushing of contract additional peanuts in compliance with the provisions of this part. Assets may include, but are not limited to, accounts receivable, value of inventory, equipment, plant, property, and investments. Liabilities may include accounts payable, mortgages, loans, letters of credit and other obligations.

Adequate facilities. Weighing, grading, shelling and/or milling equipment, storage facilities, and other physical plant and equipment owned, leased or subleased by a handler, as determined by the marketing association to be sufficient to receive, store, process, and ship all the contract additional peanuts to be handled in, by, through, or in connection with such facilities into the export or domestic market.

All other (AO) kernels. The peanut kernels remaining in the total kernel

content of a lot of peanuts after excluding sound mature kernels and sound split kernels. AO kernels consists of damaged kernels, other kernels, and loose shelled kernels, as identified and determined by the Federal-State Inspection Service.

FSA. The Farm Service Agency of the United States Department of Agriculture.

Bright hull Valencia peanuts. Valencia type peanut produced in the Southwest for which not more than 25 percent of the shells are damaged by:

- (1) Discoloration;
- (2) Cracks or broken ends; or
- (3) Both discoloration and cracks or broken ends.

Buyback. A term used to describe a marketing transaction in which a producer places additional peanuts under loan at the additional loan rate and a handler simultaneously purchases such peanuts from the marketing association for seed or other domestic edible uses.

CCC. The Commodity Credit Corporation, an agency and instrumentality of the United States within the United States Department of Agriculture.

Commercial quantity. For purposes of determining penalties that may be due if additional peanuts that were exported are subsequently reentered into the United States, commercial quantity means any quantity of such peanuts that were reentered by any person during any marketing year if the total quantity reentered by such person or a related person exceeds 200 pounds of farmers stock peanuts or 150 pounds of shelled peanuts.

Concealed rancidity, mold or decay (RMD). Peanut kernels affected by rancidity, mold or decay which is not apparent by external examination.

Contract additional peanuts. Additional peanuts for crushing or exportation, or both, for which a contract has been entered into between a handler and producer in accordance with this part.

Crushing. The processing of peanuts to extract oil for food uses and meal for uses as allowed by the provisions of this part or the processing of peanuts by crushing or otherwise when authorized by the Secretary.

Current marketing year. The marketing year that begins on August 1 during the calendar year in which the applicable crop of peanuts was planted.

Damaged kernels (DK). Defective whole kernels which ride the screen officially designated for the peanut type, and the defective splits found in farmers stock which, as determined upon an official inspection by an inspector:

- (1) Are rancid, decayed or moldy;
- (2) Have sprouts more than $\frac{1}{8}$ inch long;
- (3) Are affected by insects, worm cuts, web or frass;
- (4) Are dirty, with appearance materially affected;
- (5) Are affected by flesh discoloration or skin discolorations affecting more than 25% of the surface; or
- (6) Are affected by freezing, or have any characteristic of freeze damage.

Dark hull Valencia peanuts. Valencia type peanuts that are produced in the Southwest and that do not meet the requirements for bright hull Valencia peanuts.

DASCO. The Deputy Administrator, State and County Operations, FSA.

Director. The Director, or Acting Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture.

Dollar value. An amount determined as follows:

- (1) For inspected peanuts, the total of the amounts determined from each applicable form ASCS-1007, Inspection Certificate and Sales Memorandum, by multiplying the applicable quantity by the quota loan rate that would apply to peanuts of the type and quality recorded on such form ASCS-1007 without regard to whether such peanuts were found to contain visible *Aspergillus flavus* mold.

- (2) For noninspected peanuts, the amount determined by multiplying the quantity involved by the national average price support rate for quota peanuts.

Domestic edible use. Domestic edible use means:

- (1) Use of peanuts for milling to produce domestic food peanuts (including the processing of peanuts into flakes);

(2) Use of peanuts for seed, excluding unique strains which meet both of the following requirements:

- (i) They are not commercially available, and
 - (ii) They are used exclusively for the production of green peanuts; and
- (3) Use of peanuts on a farm.

Edible export standard for contract additional peanuts. The standards for raw shelled or in-shell peanuts of any crop exported for human consumption constituting U.S. Standards grade requirements, or modifications thereof, and requirements as to wholesomeness, as are specified in the outgoing quality regulations for such crop as set forth in the Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts (the Peanut Marketing Agreement No. 146), except that peanuts shown by the applicable form FV-184-9, Federal-State Inspection Certificate (Peanuts), to deviate from these requirements shall be considered as meeting such requirements if the handler certifies to the marketing association that such deviations are:

- (1) Acceptable to the export buyer; and
- (2) Fall within the range of deviations allowable under the Peanut Marketing Agreement No. 146.

Eligible country. With respect to credit for exportation of additional peanuts, any destination outside the United States for which an export license may be acquired, except that with respect to the 1991 crop, neither Canada nor Mexico shall be considered an eligible country for the purpose of exporting peanut products other than treated seed peanuts.

Eligible peanuts. Eligible peanuts are farmers stock peanuts that:

- (1) Were produced in the United States by an eligible producer;
- (2) Were planted during the year in which the current marketing year begins;
- (3) Are free and clear of any liens and encumbrances, except a statutory lien that has resulted from failure to pay a peanut poundage quota penalty, unless acceptable waivers are obtained;
- (4) Unless otherwise approved by the Executive Vice President, CCC, were produced in the area served by the marketing association through which

the price support loan is being requested;

- (5) Were not produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession;
- (6) Have been inspected and have an official grade determined by a Federal or Federal-State inspector; and
- (7) Must, if delivered to the association in bags in the Southwestern area, be in new or thoroughly cleaned used bags which:

- (i) Are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers;
- (ii) Are free from holes;
- (iii) Are finished at the top with either the selvage edge of the material, a binding, or a hem; and
- (iv) Are uniform in size with approximately a 2 bushel capacity.

Eligible producer. An eligible producer for purposes of price support under this part shall be a person who meets all of the following:

- (1) As a landowner, landlord, tenant, or sharecropper, the person produced the peanuts that are being pledged as collateral for a price support loan or is a bona fide successor to such person.
- (2) The person has beneficial interest in the peanuts that are being pledged as collateral for a price support loan and had such beneficial interest before such peanuts were harvested.
- (3) The person is in compliance with the provisions of:
 - (i) Part 12 of this title relating to persons producing agriculture commodities on wetlands or highly erodible land.
 - (ii) Part 796 of this title relating to growing a controlled substance.
 - (iii) Part 1498 of this title relating to the eligibility of foreign persons for loans or benefits.
 - (iv) Part 400 of this title relating to crop insurance requirements.
- (4) The person has not marketed 100 percent of a quota peanut crop that meets the quality requirements for domestic edible use, through a marketing association for the 2 marketing years immediately preceding the current marketing year, if handlers have provided the producer with written offers,

upon delivery, for the purchase of all the quota peanuts, at a price equal to or in excess of the quota support price. If a producer is rendered ineligible for quota price support under this or any other provision, the producer may appeal the ineligibility determination utilizing procedures provided in part 780 of this title.

(5) That is not ineligible for a price support loan under any other provision of law or regulation.

Export and exportation. A shipment of peanuts or peanut products from the United States that is directed to a country outside the United States for which a statement, which is signed by the handler and specifies the name and address of the consignee, is made available to the marketing association or CCC, or, upon request by the marketing association or CCC, for which a consignee receipt is made available to the marketing association or CCC.

Farmers stock peanuts. Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, LSK's, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any LSK's that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

Foreign material (FM). Anything other than peanuts, which is found in farmers stock peanuts.

Fragmented peanuts. Peanuts meeting the qualifications for fragmented peanuts as defined in the outgoing quality regulations of the Peanut Marketing Agreement (No. 146) applicable to the crop year in which the peanuts were produced.

Handler. Any person that acquires peanuts for resale, domestic consumption, processing, exportation, or crushing through a business involved in buying and selling peanuts or peanut products.

In-shell peanuts. Cleaned peanuts in the shell which are mature, dry and free from:

- (1) LSK's,
- (2) Dirt or other foreign material,
- (3) Pops,
- (4) Paper ends, and

(5) Damage caused by cracked or broken shells.

Inspector. A Federal or Federal-State inspector authorized or licensed by the Administrator, Agricultural Marketing Service, United States Department of Agriculture (USDA), to grade peanuts.

Liquidated damages. An amount due, but not as a penalty, as an amount estimated to be the probable damage to the peanut price support program when a producer or handler has taken an action that is contrary to the regulations in this part and a determination is made in accordance with such regulations that such action may damage the administration or efficiency of the price support program.

Loan rate. The applicable national average support rate announced by the Secretary for quota or additional peanuts for the current year, as adjusted for differences in grade, type, quality, location and other factors.

Loan value. For eligible farmers stock peanuts, the amount determined by multiplying the applicable loan rate, as determined for the applicable marketing category, by the net weight of such peanuts that are pledged as collateral for a price support loan.

Loose shelled kernel (LSK). Peanut kernels or portions of kernels determined by official inspection to be free of their hulls and scattered in farmers stock peanuts.

Lot—(1) Farmers stock peanuts. That quantity of farmers stock peanuts for which one form ASCS-1007 or other inspection certificate is issued. For farmers stock peanuts delivered to the marketing association for a price support loan advance, a lot shall consist of the contents of one vehicle, except that a lot may consist of the contents of two or more vehicles if the contents of such vehicles do not exceed a total of approximately 24,000 pounds of peanuts.

(2) *Milled peanuts.* That quantity of milled or shelled peanuts for which one form FV-184-9 or substitute approved for general use by the Executive Vice President, CCC, is issued. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds.

Marketing association. An area marketing association selected and approved by the Secretary which is operated primarily for the purpose of conducting loan activities as provided for in this part. The approved area marketing associations and the areas served by such associations are as follows:

(1) *GFA Peanut Association of Camilla, Georgia (GFA).* GFA serves the Southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the States of Alabama, Florida, Georgia, Mississippi and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(2) *Peanut Growers' Cooperative Marketing Association of Franklin, Virginia (PGCMA).* PGCMA serves the Virginia-Carolina area consisting of the District of Columbia, and the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers; and

(3) *Southwestern Peanut Growers Association of Gorman, Texas (SWPGA).* SWPGA serves the Southwestern area consisting of the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming, and all other territories of the United States not listed in paragraphs (1) or (2).

Marketing card. Form ASCS-1002, Peanut Marketing Card, that has been issued in accordance with part 729 of this title for use, at the time of each initial marketing of peanuts from a farm, to identify the farm on which such peanuts were produced and to provide other pertinent information that may be required when such peanuts are marketed.

Marketing penalties—(1) *Producer.* For producers, the penalties prescribed in part 729 of this title.

(2) *Handler.* For handlers, the penalties which are prescribed, computed,

assessed and collected in accordance with this part and are effective for the applicable crop.

Marketing year. The 12-month period beginning on August 1 of a year in which the peanuts are planted and ending on July 31 of the following year.

Net weight. Unless otherwise specified in this part, the gross weight of a lot of farmers stock peanuts, as recorded on the form ASCS-1007, less:

(1) The weight of any foreign material in such lot; and

(2) The amount determined by subtracting 7 percentage points from any percentage of moisture in excess of 7 percent and multiplying the result by the gross weight of such lot excluding foreign material.

Nonphysical supervision. Supervision of the disposition of additional peanuts whereby representatives of the marketing association or other representatives of the Secretary can determine, in accordance with this part, whether additional peanuts purchased for crushing or export have been disposed of in accordance with the provisions of this part without the "physical" presence of such representatives to verify the actual handling and disposition of such peanuts. Such supervision shall be conducted in accordance with this part and shall consist of the review and analysis of records which handlers are required to make available to representatives of the Secretary for the verification of proper disposition of additional peanuts under this supervision option.

Other kernels (OK). The kernels in farmers stock peanuts which pass through screens to separate them from the sound mature kernels, but excluding sound split kernels, damaged kernels, and broken pieces less than $\frac{1}{4}$ of a whole kernel.

Participating warehouse. A storage facility whose owner or operator has entered into a peanut receiving and warehouse contract agreeing to the provisions of such contracts for the care, storage and delivery of peanuts pledged to CCC as collateral for price support loans.

Peanut meal. Any meal, cake, pellets, or other forms of residue remaining after extraction or expulsion of oil

from peanut kernels, but not including pressed peanuts.

Peanut product. Any product, other than peanut oil or peanut meal, that is manufactured or derived from peanuts including, but not limited to, peanut candy, peanut butter, treated seed peanuts, roasted peanuts (either shelled or in-shell), pressed peanuts, and peanut granules.

Peanut receiving and warehouse contract. Form CCC-1028, Peanut Receiving and Warehouse Contract (Identity Preserved Storage), or form CCC-1028-A, Peanut Receiving and Warehouse Contract (Commingled Storage), or any other form approved for general use by CCC for the purpose of receiving and warehousing loan collateral peanuts.

Physical supervision. The supervision, in accordance with this part, by representatives of the marketing association or other representatives of the Secretary of the handling and disposition of contract additional or CCC stocks of additional peanuts which have been sold for crushing or export. Such supervision requires, as provided for in this part, the "physical" presence of such representatives to observe the actual handling, loading, shelling, transportation, processing, and exportation of peanuts which have been purchased or otherwise designated as additional peanuts.

Pools. Accounting pools established by the marketing association in accordance with this part for peanuts that have been pledged as collateral for price support loans.

Quota loan rate. The price support loan rate that is applicable to a lot of quota peanuts.

Quota peanuts. Peanuts which are:

- (1) Eligible for domestic edible uses; and
- (2) Marketed or considered marketed from a farm as quota peanuts pursuant to the provisions of part 729 of this title and are not in excess of the effective farm poundage quota established for the farm on which such peanuts were produced.

Raw peanuts. In-shell peanuts, shelled peanuts, blanched peanuts, or any other classification of peanuts as designated by CCC which have not passed through any other processing operations.

Segregations. For purposes of the peanut price support program, farmers stock peanuts shall be identified by 1 of 3 segregations, as identified and determined by the Federal-State Inspection Service, as follows:

(1) *Segregation 1.* Segregation 1 peanuts are farmers stock peanuts which are free from visible *Aspergillus flavus* mold and which:

- (i) Have at least 99 percent peanuts of one type;

(ii) Have not more than:

- (A) 2.49 percent damaged kernels (rounded to nearest whole number);
- (B) 1.00 percent concealed damage caused by rancidity, mold or decay;
- (C) 0.50 percent freeze damage;
- (D) 14.49 percent LSK's; and

(iii) Are free from any offensive odor.

(2) *Segregation 2.* Segregation 2 peanuts are farmers stock peanuts which are free from visible *Aspergillus flavus* mold and which either:

- (i) Have less than 99 percent peanuts of one type; or

(ii) Have more than:

- (A) 2.49 percent damaged kernels (rounded to the nearest whole number); or
- (B) 1.00 percent concealed damage caused by rancidity, mold, or decay;
- (C) 0.50 percent freeze damage; or
- (D) 14.49 percent LSK's; or

(iii) Have an offensive odor.

(3) *Segregation 3.* Segregation 3 peanuts are farmers stock peanuts which, upon visible inspection, are found to contain *Aspergillus flavus* mold: *Provided, further,* however, that, in accordance with such written instructions as the Director may issue, the Director shall permit producers at approved buying points as specified by the Director to have a Segregation 3 lot reconditioned, one time only, so long as the reconditioning is performed at the buying point where the peanuts were initially delivered, and then reinspected visually. Such reinspection may not occur more than 24 hours from the initial inspection except as permitted by the Director and the second grade shall be considered the final grade for the farmers stock peanuts.

Sound mature kernel (SMK). A whole kernel which rides the screen officially designated for the peanut type and as

identified and determined by the Federal-State Inspection Service to be SMK's.

Sound split (SS) kernel. A peanut kernel which is a split or broken kernel as identified and determined by the Federal-State Inspection Service to be a SS kernel.

Support rate—(1) National average. The national average price support rate for quota peanuts, for each of the 1996 through 2002 crops, shall be \$610.00 per ton. The national average price support rate for additional peanuts, for each of the 1996 through 2002 crops, shall be the rate announced by the Secretary as set out in § 1446.310.

(2) *By types.* With respect to each of the types of peanuts, the price support rate by type shall be the rate so announced on an annual basis by the Secretary for the particular type of peanuts on the basis of the differences between the types and the anticipated weighted average on a national basis of the quality factors and other factors affecting value for the respective types.

Total kernel content (TKC). The TKC of a lot of peanuts is the total of SMK's, SS kernels, and AO kernels in such lot.

TPD. The Tobacco and Peanuts Division of FSA.

Treated seed peanuts. Shelled peanuts that have been modified from their original shelled state by a treatment to make them suitable for seed purposes.

Type. The generally known genetic varieties or types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as identified and determined by the Federal-State Inspection Service.

United States. The 50 States of the United States, Puerto Rico, the territories of the United States, and the District of Columbia.

United States government agency. Any department, bureau, administration, or other agency of the Federal Government or corporation wholly owned by the Federal Government.

Valencia type peanuts produced in the Southwest that are suitable for cleaning and roasting. Peanuts that are identified, determined and classified by the

Federal-State Inspection Service as bright hull Valencia peanuts.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38328, Aug. 13, 1991; 60 FR 35835, July 12, 1995; 61 FR 37623, July 18, 1996; 62 FR 62692, Nov. 25, 1997; 63 FR 41713, Aug. 5, 1998]

§ 1446.104 Performance based upon action or advice of a representative of the Secretary.

The provisions of part 791 of this chapter with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 1446.105 Handling payments and collections not exceeding \$9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of \$9.99 or less which are due the handler will be paid only upon the handler's request. Deficiencies of \$9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

Subpart B—Basic Handler Operations

§ 1446.201 General handler provisions.

(a) *Handler registration and approval.* To avoid marketing penalties otherwise provided in this part for failure to register as a handler, each person who plans to acquire peanuts for processing or resale must register as a handler and be approved as a handler in accordance with this paragraph.

(1) *Registration.* Registration must be made on the form ASCS-1008, Application for Handler Card, and must be filed:

(i) For each marketing year in which such person expects to acquire peanuts for processing or resale.

(ii) With each marketing association that serves the marketing area in which such person plans to acquire peanuts during the applicable marketing year.

(iii) Prior to the time such person acquires peanuts, during the respective marketing year, within the marketing area served by such marketing association.

(2) *Approval.* The determination of whether a handler will be approved

shall be made by the applicable marketing association in which the registration was filed and, in the case of approval, such approval shall be evidenced by a handler registration number that is issued by such marketing association.

(b) *Handler of loan peanuts.* To handle loan peanuts, either quota or additional, a person must be approved as a handler and must contract with the marketing association on form CCC-1028 or form CCC-1028-A to handle such peanuts. To contract to handle loan peanuts, the handler must meet all requirements of the applicable warehousing contract with respect to receiving, handling and storing loan peanuts.

(c) *Handler of contract additional peanuts.* To handle contract additional peanuts in a marketing area, a person must be approved as a handler for that area in accordance with this part.

(d) *Marketing assessments and marketing penalties.* A handler shall collect and pay marketing assessments and marketing penalties in accordance with the provisions in part 729 of this title.

(e) *Penalties and other remedies.* Any handler that fails to register in accordance with this section shall be subject to all penalties that may apply to handlers under this part and all other remedies that apply against handlers. Further, such handler shall be subject to penalties for non-registration as may apply.

§ 1446.202 Peanut buyer card and buying point card.

(a) *Peanut buyer card.* The marketing association which approves a handler will assign a registration number to such handler and CCC will issue an embossed peanut buyer card which will show the handler's registration number, name and address. The handler will use the buyer card for identification when buying or selling peanuts.

(b) *Buying point card.* CCC will issue a buying point card to the Federal-State Inspection Service for delivery to each handler who operates a buying point at which peanuts are inspected. The buying point card will show a buying point number that will be used to identify

the physical location of such buying point.

§ 1446.203 Marketing card entries and collection of assessments, penalties and debts.

The handler shall make marketing card entries and shall collect assessments, penalties and debts in accordance with the provisions in this part and in part 729 of this title.

(a) *Indebtedness to the United States due to peanut marketing penalties.* As provided in part 729 of this title, if a producer is indebted to the United States for a peanut marketing penalty, such penalty shall result in a lien in favor of the United States on any peanuts in which such producer has an interest and any person who acquires peanuts from such producer shall be considered to have notice of such lien at the time such lien becomes attached. Except with respect to any lien that was perfected before the peanut poundage quota lien became attached in those cases not involving peanuts placed in the price support loan inventory, any person who acquires peanuts from such producer shall deduct the lien amount plus any applicable interest from the proceeds otherwise due to such producer as a result of the acquisition of the peanuts. Any deducted amount shall be paid to CCC in accordance with instructions issued by the Deputy Administrator. In the event a required deduction is not made from the proceeds for such peanuts, the person who acquires such peanuts shall be liable to CCC for the amount of the lien, to the extent of the market value of such peanuts or proceeds of the peanuts whichever is higher.

(b) *Farmers Home Administration or Farm Service Agency lien.* If a Farmers Home Administration or Farm Service Agency lien has been recorded on the marketing card that was issued for the use of a producer when marketing peanuts, the purchaser of such peanuts shall make the check, for the proceeds from such peanuts, payable jointly to the producer and the Farm Service Agency. However, if a peanut poundage quota lien was also recorded on the marketing card against such producer,

the check shall be made payable jointly to the producer, CCC and the Farm Service Agency.

[56 FR 16230, Apr. 19, 1991, as amended at 61 FR 37623, July 18, 1996]

§ 1446.204 Transmittal of collections of penalties and claims.

(a) *Commercial purchases.* A handler shall use form ASCS-1012, Buyer's Transmittal of Claims and/or Marketing Penalty, to transmit to FSA any marketing penalty or peanut poundage quota lien that is collected directly or indirectly from a producer at the time such producer marketed peanuts as quota commercial or contract additional peanuts. Such collections shall be made in accordance with the requirements of part 729 of this title. A collection is considered to have been made at the time of marketing the peanuts. Each collection shall be sent to the county FSA office which issued the marketing card and, unless otherwise approved by the Executive Vice President, CCC, shall be sent within 15 days after the collection is made.

(b) *Loan peanuts.* Withholdings from the loan value due a producer which represent collections of marketing penalties, peanut poundage quota liens or U.S. claims shall be transmitted or handled in accordance with instructions issued by the marketing association or CCC.

Subpart C—Warehouse Storage Loans

§ 1446.301 Eligibility of peanuts for price support at the quota loan rate.

For peanuts to be eligible for a price support loan at the quota loan rate such peanuts:

- (a) Must be eligible peanuts that were produced by an eligible producer;
- (b) Must be Segregation 1 peanuts;
- (c) If mechanically dried, must contain at least 6 percent moisture;
- (d) Must not contain more than:
 - (1) 10.49 percent moisture;
 - (2) 10 percent foreign material; or
 - (3) 14.49 percent LSK's;
- (e) When added to prior marketing of quota peanuts from the farm, must not exceed the effective quota established

for the farm on which such peanuts were produced.

§ 1446.302 Eligibility of peanuts for price support at the additional loan rate.

(a) *General.* For peanuts to be eligible for a price support loan at the additional loan rate, such peanuts:

- (1) Must be eligible peanuts that were produced by an eligible producer;
- (2) must not contain more than:
 - (i) 10.49 percent moisture;
 - (ii) 10 percent foreign material; or
 - (iii) 14.49 percent LSK's.

(b) *Exception to general requirements.* Notwithstanding the provisions in paragraph (a) of this section:

(1) *Seed peanuts.* Peanuts that were produced for seed under the auspices of a State agency that controls the production of seed peanuts may receive a price support loan at the additional loan rate if:

- (i) Such peanuts are eligible peanuts that were produced by an eligible producer; and
- (ii) In accordance with this part, the handler purchases the peanuts from the loan inventory for domestic seed use in accordance with this part.

(2) *Peanuts with excess moisture, foreign material, or LSK's.* Peanuts that contain excessive moisture, foreign material, and/or LSK's may receive a price support loan at the additional loan rate if the marketing association determines:

- (i) That the moisture level is acceptable for storage until such peanuts may be crushed; and
- (ii) That the producer made a bona fide effort to clean such peanuts prior to offering such peanuts as collateral for a price support loan.

§ 1446.303 Delivery of peanuts for price support advance.

(a) *Warehouse storage loans.* Any warehouse operator who has entered into a contract with the marketing association to receive and store peanuts shall inform producers that price support advances are available and shall make such advances on eligible peanuts tendered for price support as provided in such contract.

(b) *Where available.* Unless otherwise approved by the marketing association

or by CCC, producers must deliver farmers stock peanuts to any participating warehouse that is located in the same marketing area in which the peanuts were produced. The names and locations of participating warehouses may be obtained from the office of the appropriate marketing association or from State or county FSA offices.

(c) *Contract requirements.* Any contract for receiving and storing peanuts pledged as collateral for a price support loan shall require the warehouse operator to:

(1) Examine the producer's marketing card to determine price support eligibility;

(2) Make entries on the marketing card as required by § 729.304 of this title and by this part; and

(3) Execute a form ASCS-1007 in accordance with this part for each lot of peanuts on which a price support advance is made.

(d) *Time.* Price support advances to eligible producers on peanuts of any crop will be available from the beginning of the marketing year through the following January 31 or such later date as may be established by the Executive Vice President, CCC.

(e) *Inspection.* An inspector shall determine the type and quality of each lot of farmers stock peanuts that is delivered to a participating warehouse for a price support advance from the marketing association.

(f) *Producer agreement.* To obtain a price support advance, the producer shall provide written authorization to the marketing association, and in the form prescribed by the applicable marketing association, to pledge the producer's peanuts to CCC as collateral for a warehouse storage loan and in so doing, the producer shall relinquish any right to redeem or obtain possession of such peanuts.

(g) *Advance to the producer.* For each lot of peanuts delivered by a producer to a participating warehouse for a price support advance, the warehouse operator, acting in behalf of the marketing association:

(1) Shall inquire of each producer as to whether any liens, other than a statutory peanut poundage quota lien, exist on peanuts offered for loan and shall note the response on form CCC-

1041, Warehouse Receipt and Draft (A failure to make such an inquiry shall render the warehouseman liable for the amount of the lien to the extent of any loss to CCC);

(2) Shall advance to the producer the applicable loan value of such peanuts. However, if a lien exists, the loan advance draft, form CCC-1041, shall be made payable jointly to the producer and each known lienholder except in those cases in which a peanut poundage quota lien was attached, as provided in part 729 of this title before any other lien was recorded. In such case the peanut poundage quota lien shall be deducted from the proceeds and a draft may be issued for any remaining balance;

(3) Shall deduct from such advances any:

(i) Marketing penalty;

(ii) Marketing assessment as provided in part 729 of this title;

(iii) Peanut poundage quota lien;

(iv) Assessment or excise tax imposed by State law;

(v) U.S. claim;

(vi) Farm storage facility loan installment payment that is currently due to CCC; and

(vii) Any other debt that is owed by such producer to a United States government agency.

(4) As applicable, shall transmit, in accordance with applicable instructions, such deducted amounts to the:

(i) County FSA office;

(ii) Applicable State agency; or

(iii) CCC; and

(5) If such peanuts were produced in the Southwestern area, and upon the prior agreement of the producer, may deduct from such advance an amount approved by CCC, but not to exceed \$2.00 per net weight ton of peanuts, to be used in financing the marketing association's peanut related activities outside the price support program.

[56 FR 16230, Apr. 19, 1991, as amended at 58 FR 41626, Aug. 5, 1993]

§ 1446.304 Price support loans involving estates, trusts or minors.

(a) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or administrator of a deceased person's estate, a guardian of an estate or of a ward or

incompetent person, and trustees of a trust estate may be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the peanut production of the receiver, executor, administrator, guardian, or trustees attributable to the person represented shall be considered to be the production of the person represented. Loan documents executed by any such person shall be accepted by CCC only if they are valid, as determined by CCC, and such person has the authority to sign the applicable documents.

(b) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if such minor meets one of the following requirements:

(1) The right of majority has been conferred on such minor by court proceedings or by statute; or

(2) A guardian has been appointed to manage such minor's property and the applicable price support documents are signed by the guardian; or

(3) An acceptable bond is furnished under which a surety acceptable to CCC guarantees to protect CCC from any loss for which the minor would be liable had such minor been an adult.

§ 1446.305 Additional peanuts ineligible for price support.

(a) *Marketing penalty.* A marketing penalty is due if additional peanuts are marketed or considered marketed in any manner other than:

(1) Through a price support loan at the additional loan rate; or

(2) Through purchase for crushing or export by a handler who, in accordance with this part, has an approved contract with the producer to purchase peanuts for such purpose.

(b) *Delivery to avoid penalty.* Notwithstanding the provisions in paragraph (a) of this section, a person who has produced additional peanuts may avoid a marketing penalty on such peanuts through forfeiting such peanuts by delivering such peanuts to the marketing association for the area where the peanuts were produced and in accordance with instructions issued by the marketing association if:

(1) Such person is not an eligible producer; and

(2) Such person does not have a contract with a handler to purchase such peanuts for crushing or exportation.

(c) *Interest due.* A producer who pledges peanuts as collateral for a price support loan at the additional loan rate shall refund the loan advance on such peanuts with interest if, subsequent to the time the peanuts are pledged for the loan, it is brought to the attention of the marketing association that such person is not an eligible producer. Interest shall be due:

(1) At the same interest rate that was applicable on funds borrowed from CCC by the marketing association on the date the loan was disbursed.

(2) From the date the loan was disbursed to the date of repayment.

§ 1446.306 Commingling of peanuts.

To facilitate handling and marketing, unless prohibited by a handler's storage contract with the marketing association, a handler may store farmers stock loan peanuts on a commingled basis with peanuts owned by such handler if such peanuts are of like crop, type, area, and segregation.

(a) *Accounting for commingled peanuts.* Except for peanuts purchased from CCC for domestic edible use on an in-grade and in-weight basis, commingled peanuts shall be exchanged on a dollar value basis. Accordingly, when loan peanuts are removed from the warehouse they must be inspected as farmers stock peanuts by an inspector and accounted for on a dollar value, based on the quota loan rate, less a one-time adjustment for shrinkage for each crop.

(b) *Dollar value shrinkage adjustment.* For peanuts that are graded out and accounted for:

(1) Before February 1 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(i) 3.5 percent for Virginia-type peanuts; and

(ii) 3.0 percent for all other peanuts.

(2) After January 31 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(i) 4.0 percent for Virginia-type peanuts; and

(ii) 3.5 percent for all other peanuts.

(c) *Maintaining copies of the ASCS-1007's.* The handler shall maintain a copy of each form ASCS-1007 that was issued for any peanuts that are placed in commingled storage and that is issued for any peanuts removed from storage.

(d) *Good commercial practice.* The handler shall receive, store and deliver all such peanuts in accordance with good commercial practice and any instructions provided by CCC.

§ 1446.307 Disaster transfer of Segregation 2 or Segregation 3 peanuts from additional loan to quota loan.

(a) *Transfer of Segregation 2 and Segregation 3 peanuts.* Except as otherwise provided in this section, after a producer has completed marketing all peanuts produced on the farm, such producer may transfer a loan on Segregation 2 or Segregation 3 additional peanuts to a quota loan.

(b) *Limitation of amount eligible for transfer.* A transfer made in accordance with this section shall not exceed the smaller of:

(1) The difference between:

(i) The total quantity of Segregation 1 peanuts marketed from the farm, plus the amount of peanuts retained on the farm for seed or other use, and

(ii) The effective farm poundage quota, excluding quota pounds transferred to the farm in the fall; or

(2) Twenty-five percent of the effective farm poundage quota, excluding quota pounds transferred to the farm in the fall.

(c) *Offset of CCC losses.* As provided in this part, if a producer transfers an additional loan to a quota loan in accordance with the provisions of this section, any pool proceeds otherwise due such producer from peanuts in another pool shall be reduced by the amount of any losses to CCC on the peanuts so transferred.

(d) *Loan value for transferred peanuts—(1) Segregation 2 peanuts.* The quota loan value for any lot of Segregation 2 peanuts transferred from an additional loan to a quota loan shall be determined by multiplying 70 percent of the quota loan rate that otherwise would have been applicable for such lot of peanuts as quota peanuts, exclusive of any discount for damaged kernels,

by the net weight of peanuts being transferred and deducting from the result the amount of any special discount that may apply for Segregation 2 peanuts transferred in accordance with this section.

(2) *Segregation 3 peanuts.* The quota loan value for any lot of Segregation 3 peanuts transferred from an additional loan to a quota loan shall be determined by multiplying 70 percent of the quota loan rate that otherwise would have been applicable for such lot of peanuts as quota peanuts, exclusive of any discount for damaged kernels, by the net weight of peanuts being transferred and deducting from the result the amount of any special discount that may apply for Segregation 3 peanuts transferred in accordance with this section.

(e) *Transfer provisions—(1) Where to apply.* Producers who are eligible to transfer additional loan peanuts to the quota loan pool in accordance with the provisions of this section may apply for such transfers with the county FSA office.

(2) *Determination of the amount eligible for transfer.* The county office shall determine, in accordance with paragraph (b) of this section, the quantity of additional peanuts which are eligible for transfer.

(3) *Designation of peanuts to be transferred.* The producer must indicate to the county office the net weight and applicable form ASCS-1007 serial numbers for the peanuts to be transferred.

(4) *Applicability of marketings.* Any peanuts that are transferred from an additional loan to a quota loan shall be considered as marketings of quota peanuts and the applicable records shall be appropriately adjusted.

(f) *Supplemental loan payment.* The difference between the additional and quota loan rates for such peanuts, less the appropriate adjustment for the marketing assessment, shall be advanced by the marketing association to the applicable producer.

(g) *Waiver of right to make transfer.* Notwithstanding any other provisions in this section, an additional loan on Segregation 2 or Segregation 3 peanuts shall not be transferred to a quota loan under this section with respect to that

quantity of peanuts for which the producer has executed a waiver of the right to make such a transfer in order to obtain indemnity benefits from the Federal Crop Insurance Corporation or has agreed to such a waiver with any other Federal agency.

[56 FR 16230, Apr. 19, 1991, as amended at 57 FR 49633, Nov. 3, 1992; 61 FR 37624, July 18, 1996]

§ 1446.308 Loan pools.

(a) *Establishment of pools.* (1) Each marketing association shall establish six separate loan pools; one for each of the three segregations of additional peanuts and one for each of the three segregations for quota peanuts. These pools shall be formed without regard to the type of peanuts (Runner, Virginia, Spanish, or Valencia) involved. However, the SWPGA shall also establish 12 separate loan pools for Valencia peanuts produced in New Mexico, namely, for bright hull peanuts and for dark hull peanuts separately, to include for each of them separate, by segregation, additional peanuts and quota peanuts pools. Each marketing association shall maintain separate, complete and accurate records for each loan pool that is established by the marketing association.

(2) *Eligibility to participate in New Mexico Pools—*(i) *In general.* Except as provided in clause (a)(2)(ii) of this section, in the case of the 1996 and subsequent crops, Valencia peanuts not physically produced in the State of New Mexico shall not be eligible to participate in the pools of the State even if the farm on which the peanuts are produced is constituted for administrative purposes within the State of New Mexico.

(ii) *Exception.* A producer of Valencia peanuts may enter Valencia peanuts that are physically produced in Texas into the pools for New Mexico in a quantity not greater than the average annual quantity of the peanuts that the producer entered into the New Mexico pools for the 1990 through 1995 crops; however, to qualify, the peanuts must be produced on the same farm on which the peanuts were produced during the base years of 1990 through 1995.

(b) *Net gains for quota pools.* Net gains from peanuts in each quota pool shall

consist of the amount by which the proceeds from the sale of the peanuts in such pool are in excess of the indebtedness on the peanuts in such pool.

(c) *Net gains for additional pool.* Net gains for peanuts in each additional pool shall consist of:

(1) The net gains which are in excess of the indebtedness on the peanuts placed in such pool; less

(2) Any amount as provided in paragraph (d) of this section that is allocated to offset any loss on the pools for Segregation 1 quota peanuts, and any other amount properly offset.

(d) *Recovery of losses in quota area loan pools.* (1) If the loan indebtedness on the peanuts in a quota area pool exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered using the following sources in the following order of priority:

(i) Proceeds due any individual producer from any pool, as a result of the transfer of peanuts for pricing purposes from an additional loan pool to a quota loan pool, pursuant to the provisions in § 1446.307.

(ii) Gains of any producer in the same pool, by the amount of pool gains attributed to the same producer from the sale of additional peanuts for domestic and export edible use.

(iii) Gains or profits resulting from the sale of additional peanuts, other than Valencia peanuts produced in New Mexico in separate type pools established under paragraph (a) of this section, in the same marketing area for domestic edible use, that are owned or controlled by CCC. This paragraph shall not apply to gains or profits from the sale of peanuts that were produced on farms with 1 acre or less of peanut production.

(iv) Marketing assessments, collected from producers under § 729.316 of this title, that the Secretary determines are necessary to cover losses in area quota pools.

(v) Gains or profits from quota pools in other marketing areas, other than separate type pools established under paragraph (a) of this section for Valencia peanuts produced in New Mexico.

(vi) Gains or profits resulting from the sale of additional peanuts in other marketing areas, other than Valencia

peanuts produced in New Mexico in separate type pools established under paragraph (a) of this section, for domestic edible use, that are owned or controlled by CCC. This paragraph shall not apply to gains or profits from the sale of peanuts that were produced on farms with 1 acre or less of peanut production.

(vii) Marketing assessments, collected from handlers under § 729.316 of this title, that the Secretary determines are necessary to cover losses in area quota pools.

(viii) Increased marketing assessments on quota peanuts in the production area covered by the pool, which shall be assessed as needed and collected from producers under § 729.317 of this title.

(2) The exceptions provided for Valencia peanuts in paragraph (d)(1) of this section shall only apply as to prevent offsets between pools for each of the Valencia types (bright-hull and dark-hull) for New Mexico and other peanuts.

(e) *Pool distribution.* (1) Net gains as determined in accordance with this section on peanuts in each area pool shall be distributed to each producer who placed peanuts in that pool in proportion to the dollar value of peanuts placed in such pool by that producer, except that the proceeds available for the amount of distribution shall be subject to any other conditions and offsets set forth in this section; and

(2) Distributions shall not be assigned to any other party.

(f) *Loan indebtedness.* With respect to determining the gains and losses in accordance with this section for loan pools for quota and additional peanuts, the term "indebtedness" with respect to a pool shall include, but is not limited to, the following expenses associated with such peanuts:

- (1) Loan advance to producers.
- (2) Inspection fees.
- (3) Storage and handling charges.
- (4) Shelling costs.
- (5) Transportation and related charges.
- (6) Administrative and supervision expenses.

(7) Interest applicable to any repayable amount.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38329, Aug. 13, 1991; 61 FR 37624, July 18, 1996]

§ 1446.309 Immediate buyback and sale of loan peanuts to the storing handler.

(a) *"Immediate buyback" purchase of additional peanuts—*(1) *Producer consent.* Except as provided in this section, if the producer of a lot of additional peanuts has consented to an "immediate buyback" of such peanuts by a handler, as indicated by a designation recorded on the form ASCS-1002, the handler that acts for the marketing association in advancing funds to the producer for a price support loan at the additional loan rate on such peanuts may purchase such peanuts from the marketing association for domestic edible use in accordance with instructions from the marketing association and at a price equal to 100 percent of the quota loan value of such peanuts plus a handling charge, as determined by the marketing association and approved by CCC, to cover all costs incurred with respect to such peanuts for inspection, warehousing, shrinkage, and other expenses.

(2) *Time for buyback purchase.* An "immediate buyback" purchase may be made only in connection with the marketing association involved in the price support loan and only on the date on which the peanuts were delivered by the producer as collateral for a price support loan. Such sales are for the account of CCC.

(3) *Handler requirements.* For each "immediate buyback," the handler shall:

(i) Act for the marketing association by making a price support advance to the producer at the additional loan rate and in the same manner that would be applicable if an "immediate buyback" were not involved;

(ii) If applicable, use such handler's funds to pay to the producer any premiums that the parties had agreed upon in order to effect the delivery of such peanuts;

(iii) Pay for the peanuts by a check made payable to CCC. Such check must be from the handler's funds and in an

amount equal to the quota loan value of the peanuts plus any handling charges; and

(iv) Transmit the handler's check and the applicable form ASCS-1007 to the marketing association by midnight of the third workday (excluding Saturdays, Sundays, and Federal holidays) following the day the peanuts were inspected.

(4) *Domestic edible use.* The handler's check and the applicable form ASCS-1007 will identify the peanuts as additional peanuts that may be used for domestic edible use.

(5) *Loan pool credit.* Irrespective of the segregation of such peanuts, the receipts from the "immediate buyback" sale will be credited to the additional loan pool for Segregation 1 peanuts and the peanuts will be treated as Segregation 1 peanuts for pool accounting purposes.

(6) *Loan pool participation.* If Segregation 2 or Segregation 3 peanuts are purchased by a handler under the "immediate buyback" provisions, the producer of such peanuts shall participate in the Segregation 1 additional loan pool in the same manner as would apply if such peanuts had been Segregation 1 peanuts.

(7) *Additional restrictions on "immediate buyback" sales.* (i) Additional peanuts of the type contracted for export or crushing from a farm may not be purchased from such farm under the "immediate buyback" provisions of this section until all of the producer's contracts for additional peanuts for the relevant crop year have been satisfied for the type to be used for the buyback, as evidenced by a contract balance of zero for that type of peanuts on the farm's marketing card;

(ii) An immediate buyback that otherwise is prohibited by paragraph (a)(7)(i) of this section may be permitted by CCC in the case of any producer on a farm who does not share in the additional peanuts for which there is a contract.

(iii) An agreement between the handler and producer to void a contract that was approved in accordance with this part shall not reduce the balance shown on the producer's marketing card for contract additional peanuts and until such contract is renewed and

satisfied the producer's additional peanuts of the same type as were covered by that contract shall not be eligible for that crop year for purchase under an "immediate buyback."

(b) *Purchase of quota or additional loan peanuts.* Quota loan peanuts, or additional loan peanuts that were not purchased by the handler under the "immediate buyback" provisions, may be bought for domestic edible use in accordance with this paragraph on an in-grade and in-weight basis.

(1) *In-grade and in-weight purchases.* A handler may purchase loan peanuts, either quota or additional, on an in-grade and in-weight basis for domestic edible use:

(i) Under terms and conditions established by the marketing association and CCC;

(ii) If such peanuts are eligible for domestic edible use; and

(iii) If such peanuts are stored in a warehouse that is operated by such handler.

(2) *Pricing.* Except with respect to "immediate buybacks," as provided for in this section, the price for peanuts purchased on an in-grade and in-weight basis shall be determined by the marketing association or CCC, as applicable, for the account of CCC, but shall not be less than the applicable carrying charges plus, with respect to each lot of peanuts purchased:

(i) 105 percent of the quota loan value that was or would be applicable to the quantity of loan peanuts in such lot, if paid for not later than December 31 of the marketing year; or

(ii) 107 percent of the quota loan value that was or would be applicable to the quantity of loan peanuts in such lot, if paid for after December 31 of the marketing year.

[56 FR 16230, Apr. 19, 1991, as amended at 57 FR 27145, June 18, 1992]

§ 1446.310 Additional peanut support levels.

(a) The national support rate for additional peanuts for the 1996 crop is \$132 per short ton.

(b) The national support rate for additional peanuts for the 1997 crop is \$132 per short ton.

[62 FR 62693, Nov. 25, 1997]

§ 1446.311 Minimum CCC sales price for certain peanuts.

(a) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1996 crop is \$400 per short ton.

(b) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1997 crop is \$400 per short ton.

[62 FR 62693, Nov. 25, 1997]

Subpart D—Handling Contract Additional Peanuts—General Provisions**§ 1446.401 Contracts for additional peanuts for crushing or export.**

An approved handler may contract with a producer to deliver additional peanuts for exporting or for crushing. In order to be valid, the contract must meet the eligibility requirements in this section and must be approved by the county committee that serves the county in which the producing farm is located for administrative purposes.

(a) *Contract form and addendum*—(1) *Contract form*. In order to be approved by the county committee, the contract must be completed on Form CCC-1005, Handler Contract With Producers for Purchase of Additional Peanuts for Crushing or Export, or on a form approved by the Executive Vice President, CCC, or designee, which follows the organization of the CCC-1005 and contains as a minimum all of the requirements provided for in paragraph (c)(2) of this section.

(2) *Availability of CCC-1005*. The marketing association shall make available a form CCC-1005 to each approved handler and to any producer upon request.

(3) *Addenda*. The handler may use an addendum to a contract form if such addendum neither negates nor conflicts with any provision in this part. Any existing addendum to the contract which relates to the marketing of additional peanuts must accompany the contract at the time the contract is filed with the county committee.

(b) *Submitting contracts for approval*—(1) *Eligible handlers*. Only a handler who

has been approved by the marketing association to handle contract additional peanuts may contract with producers to buy additional peanuts for crushing or exportation, or both.

(2) *Producer-handlers*. A person who has been approved as a producer-handler under part 1421 of this title may not contract with himself/herself to purchase contract additional peanuts that he/she may produce.

(3) *Place and time for submitting*. In order to be considered for approval, any contract between a handler and producer for the purchase of additional peanuts shall be completed and submitted:

(i) *Place*. To the county FSA office of the county in which the farm is administratively located.

(ii) *Time*. On or before September 15 of the year in which the crop is produced; except that:

(A) Should September 15 fall on a Saturday or Sunday, or other non-workday the contract must be submitted for approval no later than the last workday immediately preceding the final contracting date.

(B) If the Executive Vice President, CCC, determines that damaging weather such as drought, hail, excessive moisture, freeze, tornado, hurricane or excessive wind, or related condition such as insect infestations, plant diseases, or other deterioration of the peanut crop, including aflatoxin, is expected to have significant national impact on peanut production, the Executive Vice President may extend nationally, by up to 15 days, the final date for submitting contracts for approval. Such announcement shall be made no later than September 5 of the year in which the crop is produced.

(c) *Contract approval*. (1) A contract between a handler and a producer for additional peanuts for crushing or export shall not be approved by the county committee, if otherwise eligible, unless the county committee has been notified by the State Executive Director that the handler has been approved to contract additional peanuts and that such handler has submitted the letter of credit that is required in accordance with the provisions in this part.

(2) In order to be approved, the following information must appear on the contract:

- (i) The name and address of the operator;
 - (ii) The name and address of each producer sharing in the proceeds of the contract additional peanuts;
 - (iii) The State and County code, and farm number of the farm on which the additional peanuts are to be produced;
 - (iv) The name, address, and registration number of the handler;
 - (v) The pounds of Segregation 1, Segregation 2, and/or Segregation 3 peanuts that are contracted;
 - (vi) The final contract price to be paid by the handler and shown as a set percentage of the loan rate for quota peanuts of the type indicated on the contract; except that such final contract price shall not be less than the additional loan rate for the type of peanut indicated on the contract. A contract or an addendum to a contract that provides for a conditional supplemental payment to the producer will not be considered to negate the final contract price only if the supplemental payment to be made is expressed in a manner that a third party may determine the amount of the supplemental payment without a need for additional negotiations;
 - (vii) A disclosure by the producer of any liens or encumbrances on the peanuts;
 - (viii) The signature of the farm operator;
 - (ix) The signature of each person having an interest as a producer in the contract additional peanuts that are produced on the farm;
 - (x) The signature of the handler or the authorized agent of the handler; and
 - (xi) A prohibition against changing the price.
- (3) The county committee, or a person designated in writing by the county committee, shall approve each form CCC-1005 that conforms with the provisions in this section.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38329, Aug. 13, 1991; 61 FR 37624, July 18, 1996]

§ 1446.402 Approval as handler of contract additional peanuts.

(a) *General.* By June 15 preceding the beginning of the marketing year in which such additional peanuts will be acquired, any handler who plans to acquire contract additional peanuts in accordance with this part for crushing or for exporting must:

(1) *Application.* File an application with each marketing association that serves the area in which such handler plans to acquire contract additional peanuts. Such application:

(i) *Form.* Must be on a form or in a format provided by the marketing association.

(ii) *Method of supervision.* Must indicate the method of supervision, physical or nonphysical, selected by the handler for purposes of accounting for the disposition of any contract additional peanuts acquired by such handler.

(2) *Evidence of adequate assets and adequate facilities.* Provide evidence that is acceptable to the marketing association and CCC that such handler has:

(i) *Assets.* Adequate assets to assure compliance with the provisions in this part with respect to such handler's obligation to crush or export contract additional peanuts acquired by such handler; and

(ii) *Facilities.* Adequate facilities to handle the acquisition and disposition of any contract additional peanuts acquired by such handler.

(3) *Letter of credit for prior crop years.* Establish an irrevocable letter of credit, or increase any existing letter of credit applicable for a previous crop year, in an amount necessary to cover any outstanding marketing penalties on peanuts produced in such crop year which are still under administrative appeal or are unpaid. This requirement is in addition to any letter of credit requirement for the current year.

(b) *Approval.* The marketing association, acting on behalf of CCC, shall approve, in accordance with this part, each application that is timely filed in accordance with this section, or is filed by such extended time as may be approved by the Executive Vice President, CCC, provided that in either case, the applicant:

(1) Has selected a method of supervision;

(2) Has a U.S. address;

(3) Has provided evidence of adequate assets and adequate facilities to assure compliance with the provisions in this part with respect to the disposition of contract additional peanuts; and

(4) Has complied with the requirements of paragraph (a)(3) of this section.

(c) *Rescission of approval.* Unless the Executive Vice President, CCC, shall otherwise agree in writing, a handler's previous approval to contract for the purchase of additional peanuts for exporting or crushing and to receive and handle such peanuts shall be considered to be rescinded upon such handler's use of facilities, other than those on which the approval was based, to receive, store, process, or ship contract additional peanuts. However, a rescission will not apply if substituted facilities are approved by the association, in accordance with instructions issued by CCC, when the handler can show, as determined by the association subject to review by the Executive Vice President, that the original facilities are no longer available for use due to circumstances beyond the handler's control such as, but not limited to, fire, flood, wind damage, or mechanical failure. In the event of rescission of a handler's approval, any purchases of peanuts from producers by such handler subsequent to the rescission will be considered as purchases of quota peanuts and will subject the handlers and producers to penalties, as prescribed by this part and in 7 CFR part 729 for marketing excess quota peanuts unless such peanuts are recorded on the producer's marketing card as a marketing of quota peanuts.

(d) *Cost of supervision.* The handler shall bear the cost of supervision irrespective of the method of supervision such handler has chosen.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38329, Aug. 13, 1991]

§ 1446.403 Letter of credit.

(a) *Certification and financial guarantee (letter of credit)*—(1) *Certification.* In order to establish a letter of credit, each handler must certify to the applicable marketing association the quan-

tity of additional peanuts the handler expects to contract for delivery by producers that are served by such marketing association. The certified poundage will be the basis for establishing the letter of credit for the applicable crop. If the certified poundage is less than the actual contracted poundage, the letter of credit required of the handler for the next marketing year shall be subject to increase, as provided in this section.

(2) *Letter of credit.* The handler must present an irrevocable letter of credit to each marketing association that serves the area in which a handler plans to contract or otherwise acquire contract additional peanuts. Such letter of credit shall be issued in a form and by a bank which is acceptable to CCC and except as provided in paragraph (d) of this section shall be submitted to the appropriate marketing association not later than July 31 and before marketing cards will be issued to producers for contract additional peanuts. Unless the provisions of paragraphs (b) and (c) of this section are applicable, the amount of the letter of credit for each area shall be equal to the amount determined by multiplying 140 percent of the national average quota price support rate by, for a handler selecting nonphysical supervision, 8 percent, or, for a handler selecting physical supervision, 5 percent, of the larger of:

(i) Ninety percent of the handler's contracted pounds as recorded on contracts approved by the county committee for the preceding marketing year and in the marketing area; or

(ii) The amount of additional peanuts the handler estimates will be contracted with producers, as certified to the marketing association, for delivery during the current marketing year and in that marketing area.

(b) *Increase in letter of credit.* (1) The amount of the letter of credit required under paragraph (a) of this section shall be increased for any handler:

(i) Who has a poor performance record, as evidenced by previous penalty assessments for violations of the provisions of this part; or

(ii) Who, for purposes of handling peanuts is, as determined by CCC, a partnership, merger, joint venture, or

other similar business relationship having officials who were officials of an organization having such a record or is composed in whole or in part by merger, succession, consolidation, association or assimilation, of entities with such a record; or

(iii) Whose total acquisition of farmers stock peanuts during the preceding marketing year from purchases of contract additional peanuts exceeded, by more than 3.0 percent, the pounds on which the letter of credit for the preceding marketing year was based. Nothing in this part shall prohibit CCC from demanding an increase in the letter of credit for the current year in the event the handler has significantly underestimated the handler's purchases for the current year.

(2) The increase in the letter of credit shall be determined in accordance with the guidelines set forth in paragraph (c) of this section.

(c) *Guidelines for increasing letters of credit*—(1) *Increased letter of credit due to history of program violation.* If the handler and/or related entity was assessed penalties for program violations for any of the previous three crop years, the percentage of the pounds of contracted peanuts to which the increase specified in paragraph (b) of this section shall be applied, shall be increased by 6 percent for each year of the three-year period in which such a penalty was assessed, except that:

(i) Such increase for a particular crop year shall be 3 percent rather than 6 percent if, for all violations for that crop year:

(A) The penalties were reduced by the Executive Vice President, CCC, and paid; or

(B) Less than 120 days, or such further period as established by the Executive Vice President, have passed since the penalty assessment was made by the CCC Contracting Officer.

(ii) Previous penalty assessments, other than assessments for violations that involve the importation of additional peanuts, or the failure to properly dispose of additional peanuts, which have been paid shall not be considered as part of the violation history for any crop year if the total violations for such crop year by the handler, and

related individuals or entities, involved less than 100,000 pounds of peanuts.

(2) *Waiver of increase.* Notwithstanding (c)(1) of this section, at the discretion of the Executive Vice President, CCC, the increase required under this section may be waived upon the presentation of adequate security as determined acceptable by the Executive Vice President, CCC.

(3) *Inaccurate certification of additional peanuts acquired.* In addition to the increase required by paragraph (c)(1) of this section, if the actual purchase of contract additional peanuts for the previous marketing year exceeds, by more than 3.0 percent, the poundage on which the previous marketing year's letter of credit was based, the pounds determined in accordance with paragraphs (a)(2) (i) and (ii) of this section shall be increased by an amount equal to 3 times the amount of such excess.

(4) *Basis for determining letter of credit amount.* Any letter of credit determination under this section shall be based upon the facts as they exist on June 1 of the calendar year in which the letter of credit is to be supplied.

(5) *Unpaid interest.* References to unpaid penalties in this section shall include associated unpaid interest and unpaid late payment charges.

(d) *Extension of time for filing letter of credit.* Notwithstanding any other provision of this section, upon a request from a handler, the Executive Vice President, CCC, may extend the time for filing of a required letter of credit if such an extension is considered necessary in order for the handler to have sufficient time to acquire necessary financing.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§1446.404 Transfer of contracts prior to delivery.

An approved contract, by which a handler is to purchase additional peanuts from a producer, may not be sold, traded, or assigned except as provided in this section.

(a) *Contract transfer and delivery of contracted peanuts to other handlers.* (1) If a handler is otherwise unable to perform under any contract with a producer for the purchase of additional peanuts due to conditions beyond the

handler's control, the handler and the producer may agree to the delivery of the peanuts to another handler under the terms of the original contract or under modified terms except that, the price, quantity, type, segregation or farm number as shown on the original contract may not be changed. Conditions considered beyond the handler's control may include, but are not limited to, insolvency, bankruptcy, death, or destruction of warehouse facilities.

(2) A contract for additional peanuts shall not be transferred to another handler without the prior written approval of the Deputy Administrator. Such transfer shall be approved by the Deputy Administrator only if the Deputy Administrator determines that such transfer will not impair the effective operation of the peanut program.

(3) If the receiving handler:

(i) Has an existing letter of credit, such handler may increase the existing letter of credit to cover the total amount of farmers stock peanuts that is to be transferred. However, any increase must be made within 14 days after the transfer is approved, otherwise any increased letter of credit will not be considered for purposes of determining whether an increase will be required in the next year's letter of credit because of a deficiency in the letter of credit.

(ii) Does not have an existing letter of credit, the transfer shall not be approved unless such handler secures an acceptable letter of credit to cover the amount of farmers stock peanuts that is to be transferred.

(b) *Contract transfer and transfer of delivery obligations to other producers.* If a producer is unable to fully perform the terms of a contract with a handler for the purchase of additional peanuts due to conditions beyond the producer's control or other conditions as may be prescribed by CCC, the handler and the producer or the producer's successor-in-interest may agree to a modification of the contract or to the substitution of another producer either under the original terms of the contract or under modified terms that do not change the original contract price and quantity. Conditions considered to be beyond the producer's control may include, but are

not limited to, farm reconstitution in some cases (combinations and divisions), insolvency, bankruptcy, or death but do not include failure to produce the contracted amount from the planted acreage of peanuts due to natural disaster or related conditions or failure to plant sufficient acreage to produce the contracted quantity. Such modifications or transfers of contract obligations shall not be valid without the prior written approval of the Deputy Administrator. A transfer shall be approved only if the Deputy Administrator determines that such modifications or such transfer will not impair the effective operation of the peanut program.

(c) *County committee approval.* Contract modifications other than changes in producer, owner or operator, or changes permitted by this section, may not be approved by the county committee.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.405 Inspection of contract additional peanuts.

The type and quality of each lot of contract additional peanuts delivered under contract shall be determined by the Federal-State Inspection Service when such peanuts are delivered by a producer. To be valid, the inspection results shall be recorded on form ASCS-1007 and signed by the inspector.

§ 1446.406 Commingled storage of contract additional peanuts.

(a) *Commingled storage.* A handler may commingle quota loan, quota commercial, additional loan, and contract additional peanuts during storage. In such case the peanuts must be inspected on a farmers stock basis before such peanuts are placed in storage.

(b) *Accounting for commingled peanuts.* Contract additional peanuts in commingled storage shall be accounted for on a:

(1) Dollar value basis under physical supervision.

(2) TKC basis under nonphysical supervision.

§ 1446.407 Handler transfer of contract additional peanuts or transfer of disposition credit.

(a) *Liability and credit for export or crushing.* Except as permitted by this section, a handler shall not:

(1) Sell, assign or otherwise transfer liability for exporting or crushing contract additional peanuts to other handlers, or

(2) Sell, assign, or otherwise transfer credits for exporting or crushing contract additional peanuts to other handlers.

(b) *Transfer of farmers stock contract additional peanuts.* (1) A one-time transfer of farmers stock contract additional peanuts may be made between the entity shown as applicant 1 and the entity shown as applicant 2 on the form ASCS-1007 for the peanuts.

(2) Such transfers shall be made within the same marketing area unless approved otherwise by the marketing association or the Deputy Administrator, and in accordance with instructions issued by CCC.

(3) Before the transfer may be approved, the receiving handler's letter of credit shall be amended by an amount that will cover the amount of peanuts transferred and the transferring handler must submit to the marketing association for approval, a form CCC-1006, covering any proposed transfer of farmers stock peanuts.

(4) Such approval must be obtained before any physical movement of the peanuts from the buying point.

(5) The transfer of peanuts as farmers stock peanuts after sale by the producer shall not be permitted unless approved in writing by CCC or the marketing association.

(c) *Transfer of peanuts for processing into products.* (1) Handlers may transfer contract additional peanuts and the liability for the export of contract additional peanuts to a processor of peanut products either as:

(i) Milled peanuts; or

(ii) Farmers stock peanuts under the provisions of paragraph (b) of this section.

(2) Such transfer shall be made in accordance with the provisions of this part.

(d) *Transfer of export credit for peanuts which have been exported.* Credit for

peanuts that have been exported under the provisions of this part will be given to the applicant shown on the form FV-184-9 for the lot of peanuts that has been exported. However, if a disclaimer to the credit for export is submitted with the applicable form FV-184-9, the export credit will be transferred to the person to whom the credit was assigned.

(e) *Transfer of credit for crushing.* Disposition credit earned for peanuts crushed in accordance with the provisions of this part and under the supervision of the marketing association may be assigned to another person if a disclaimer to the credit for crushing is submitted with the applicable form FV-184-9.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.408 Decreasing or drawing upon a letter of credit.

(a) *Decreasing the letter of credit to reflect TKC obligation.* Any existing irrevocable letter of credit that has been presented by a handler may be decreased after January 31 of the calendar year following the year in which the peanuts were produced, or such earlier date as may be authorized by the Deputy Administrator, State and County Operations, if the final TKC obligation determined for such handler, when converted to a farmers stock peanuts basis by dividing the TKC pounds by 0.795 for runner peanuts; 0.75 for Spanish peanuts; 0.735 for Virginia peanuts; or 0.77 for Valencia peanuts, is less than the amount that would be applicable for such handler and for such amount of farmers stock peanuts as determined in accordance with § 1446.403 of this part. The letter of credit may be decreased to the amount so determined.

(b) *Adjusting the letter of credit for acceptable proof of disposition.* The handler shall deliver to the marketing association satisfactory evidence as described in this part, to verify that contract additional peanuts have been exported or otherwise disposed of in accordance with the provisions of this part. On January 31, of the calendar year following the year in which the peanuts were produced, and monthly thereafter of

such following year, the marketing association shall permit a reduction of the letter of credit if the existing letter of credit exceeds 140 percent of the national average quota price support rate for the applicable crop times the farmers stock equivalent of the remaining TKC obligation as determined in the same manner as provided in paragraph (a) of this section.

(c) *Drawing against the letter of credit.*

(1) If less than 16 days remain before the expiration of a handler's letter of credit, and upon authorization by CCC, the marketing association may draw against the letter of credit and apply the amount toward any penalty due for failure to properly dispose of, or account for, contract additional peanuts in accordance with this part if:

(i) By the final disposition date required in this part, a deficiency remained in the handler's obligation to crush or export contract additional peanuts;

(ii) By the date required in this part, the handler did not provide satisfactory documentary evidence of the full export of peanuts or peanut products; or

(iii) The handler has committed another violation of this part with respect to such peanuts.

(2) Any draw down against a letter of credit shall not compromise any penalty due CCC if the letter of credit is insufficient to cover the full amount of the penalty or prevent any re-determination of whether there has been a proper disposition of and/or accounting for peanuts.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.409 Access to facilities.

A handler, by entering into contracts to receive contract additional peanuts, or any person or firm otherwise receiving contract additional peanuts, shall be considered to have agreed that any authorized representative of CCC or the marketing association:

(a) May enter and remain upon any of the premises of the handler when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, milled, blanched, crushed, packaged, shipped, sized, processed into products, or otherwise handled;

(b) May inspect such peanuts and the oil, meal, and other products thereof; and

(c) May inspect the premises, facilities, operations, books, and records of the handler to the extent necessary to determine that such peanuts have been handled in accordance with this part.

§ 1446.410 Disposition date.

(a) *Final disposition date.* To avoid a penalty as provided in this part, a handler shall dispose of all contract additional peanuts, in accordance with the provisions in this part, by the final disposition date. Except as provided in paragraph (b) of this section, the final disposition date shall be October 15 of the year following the calendar year in which the crop was grown.

(b) *Extension of final disposition date.* The final disposition date for an individual handler may be extended by the marketing association to November 30 of the year following the calendar year in which the crop was grown if, by the final disposition date identified in paragraph (a) of this section, the handler files a written request with the marketing association that specifies the number of pounds for which an extension is requested.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991; 57 FR 27145, June 18, 1992; 61 FR 37625, July 18, 1996]

§ 1446.411 Export provisions.

(a) *Export to a U.S. Government agency.* Except for the exportation of raw peanuts to the military exchange services of the United States for processing outside the United States, the export of peanuts in any form by or to a United States Government agency shall not be considered as export to an eligible country, but shall instead be considered a domestic edible use of such peanuts. However, sales to a foreign government which are financed with funds made available by a United States agency, such as the Agency for International Development or CCC, will not be considered sales to a United States Government agency if the peanuts are not purchased by the foreign buyer for transfer to an agency of the United States.

(b) *Export to an eligible country.* All contract additional peanuts which are

not crushed domestically (including approved processing into flakes) and which are eligible for export shall be exported in accordance with the provisions of this part to an eligible country as peanuts or peanut products.

§ 1446.412 Evidence of export.

To receive credit toward an obligation to dispose of contract additional peanuts in accordance with this part, the handler must:

(a) *Certified statement.* Provide a statement signed by the handler specifying the name and address of the consignee and certifying that the peanuts have been exported.

(b) *Documentation.* Not later than 45 days after the final disposition date provided in this part, or a later date established by the Director, TPD, for cases where the Director finds that the handler has made a good faith effort to furnish documentation in a timely manner and that the failure to do so was due to conditions beyond the control of the handler, furnish to the marketing association or CCC the following documentary evidence of the export of peanuts or peanut products:

(1) *Export by water.* For peanuts or peanut products and peanut products that were exported by water, a non-negotiable original or original duplicate copy (not a machine made copy) of an on-board ocean bill of lading. Such bill of lading must have been signed on behalf of the carrier and must include:

- (i) The date and place of loading such peanuts on-board the vessel;
- (ii) The weight of the peanuts, peanut meal, or products exported;
- (iii) The name of vessel;
- (iv) The name and address of the U.S. exporter;
- (v) The name and address for the foreign buyer;
- (vi) The country of destination; and
- (vii) For peanut meal which is unsuitable for use as feed because of contamination by aflatoxin, the statement required on the bill of lading in accordance with this part.

(2) *Export by rail or truck.* For peanuts and peanut products that were exported by rail or truck:

- (i) A copy of the bill of lading that must include the weight of the peanuts or peanut meal or products exported,

and for peanut meal that is unsuitable for feed use because of contamination by aflatoxin, the statement required on the bill of lading in accordance with this part; and

(ii) A copy of the Shipper's Export Declaration or, in the alternative, a U.S., Canadian or Mexican Customs' document which shows entry into the country; or

(iii) Other documentation that is acceptable to the marketing association.

(3) *Export by air.* For peanuts and peanut products that were exported by air:

(i) A copy of the airway bill that must include:

(A) The weight of the peanuts, peanut meal, or peanut products exported;

(B) The consignee and shipper; and

(C) For peanut meal that is unsuitable for feed use because of contamination by aflatoxin, the statement required on the airway bill in accordance with this part; or

(ii) Other documentation that is acceptable to the marketing association.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.413 Disposal of meal contaminated by aflatoxin.

All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for non-feed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion and appropriate completion thereon the following statement showing the range and average aflatoxin content (where "_____" represents the determined values for such lot) as parts per billion (PPB):

"This shipment consists of lots of meal which contain aflatoxin ranging from "_____" to "_____" PPB and averaging "_____" PPB."

§ 1446.414 Processing additional peanuts into products.

(a) *Type of supervision.* A person, who plans to acquire additional peanuts from other handlers for processing into products for export, must register as a handler and choose a method of supervision in accordance with this section.

(b) *Physical supervision.* For purposes of this section, if physical supervision is chosen:

(1) Such supervision shall be conducted in accordance with provisions of this part; and

(2) The processor must provide a letter of credit to the marketing association as prescribed by this part which shall, to the extent practicable, be the same amount as the letter of credit that would be required in accordance with this part for an equal quantity of peanuts acquired by a handler who has entered into contracts for the purchase of additional peanuts and has chosen physical supervision.

(c) *Nonphysical supervision.* For purposes of this section, if nonphysical supervision is chosen:

(1) The processor shall:

(i) Provide a written agreement that is signed by a duly authorized person, in which the processor agrees to export additional peanuts to an eligible country in such quantities and in accordance with such procedures as are specified by this part;

(ii) Provide a letter of credit to the marketing association which shall, to the extent practicable, be the same amount as the letter of credit that would be required in accordance with this part for an equal quantity of peanuts acquired by a handler who has entered into contracts for the purchase of additional peanuts and has chosen nonphysical supervision; and

(iii) Provide to the marketing association a description of the type of product that will be processed, the type of containers, size of containers, and the standard peanut processing yield for the product.

(2) The processor shall submit proof of export to the marketing association of like kind, as determined by the marketing association, as that required by this part for exports of peanuts under nonphysical supervision.

(3) Upon verification of product yield by the marketing association, approval of the form CCC-1006, and approval of the letter of credit, a product export obligation will be established on marketing association ledgers and the processor will be notified of the quantity of product export obligation.

(4) Upon receipt of proof of export that is acceptable to the marketing association, the processor, with the concurrence of the marketing association, may reduce the letter of credit to the extent that such letter of credit exceeds the amount determined by the marketing association, in accordance with instructions issued by FSA, to be necessary to assure compliance by the processor with the provisions in this part.

(d) *Applicability of regulations.* By registering as a handler and selecting a method of supervision in accordance with this section, a processor of peanuts shall be considered to have agreed:

(1) To perform in accordance with the provisions of this part;

(2) That the provisions of this part such as access to facilities, fraud, liens against peanuts on which penalty is due, and any other provisions that apply to a handler of additional peanuts, shall apply to the processor; and

(3) That the processor shall be considered as a handler for purposes of applying the penalty provisions of this part.

(e) *Records.* A peanut processor shall maintain records that will enable the marketing association or other representative of the Secretary to determine compliance with the provisions of this section.

§ 1446.415 Prohibition on importation or reentry of contract additional peanuts.

Neither exported contract additional peanuts nor peanut products made from additional peanuts shall be imported or reentered in commercial quantities by anyone into the United States in any form. If contract additional peanuts or peanut products made from such peanuts are imported or reentered into the United States, the handler importing such peanuts or peanut products shall be liable for a penalty assessed in accordance with this part, for reentering contract additional peanuts.

§ 1446.416 Suspension of restrictions on imported peanuts.

Notwithstanding any other provision of this part, if the President issues a

proclamation under section 22 of the Agricultural Adjustment Act of 1933, as amended, temporarily suspending restrictions on the importation of peanuts, a handler, with the written consent of the producer and CCC, may purchase additional peanuts from any producer who, in accordance with this part, contracted with the handler to deliver additional peanuts to such handler and may use such peanuts for sale for domestic edible use without incurring any marketing penalty for failure to crush or export such peanuts. However, the maximum quantity of peanuts that may be purchased by such handler in accordance with this provision of this section is the quantity of contract additional peanuts that remains undelivered by such producer under the contract. For purposes of application of this section, a proclamation temporarily increasing the import quota shall not be considered the same as a temporary suspension of restrictions on the importation of peanuts.

§ 1446.417 Loss of peanuts.

Should a handler suffer a loss of peanuts as a result of fire, flood or any other condition beyond the control of the handler, the portion of such loss that may be attributed to contract additional peanuts, as determined by the marketing association shall not be greater than an amount determined by dividing the total of the contract additional peanuts acquired by the handler during the year by such handler's total peanut purchases for the year and multiplying the result by the quantity for which acceptable proof of loss has been furnished to the marketing association. Such attribution shall take into account any dispositions of peanuts that occurred prior to the loss of the peanuts for which the attribution is made.

Subpart E—Handling Contract Additional Peanuts-Physical Supervision

§ 1446.501 Accounting for contract additional peanuts acquired under physical supervision.

(a) *Commingled storage*—(1) *General.* For a handler operating under physical supervision, contract additional pean-

nuts placed in commingled storage must be accounted for on a dollar value basis less a one time adjustment for shrinkage for each crop.

(2) *Shrinkage.* For peanuts that are graded out and accounted for:

(i) Before February 1 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 3.5 percent for Virginia-type peanuts; and

(B) 3.0 percent for all other peanuts.

(ii) After January 31 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 4.0 percent for Virginia-type peanuts; and

(B) 3.5 percent for all other peanuts.

(3) *Records.* The handler shall maintain a copy of each form ASCS-1007 that was issued for any peanuts that are placed in commingled storage and that is issued for any peanuts removed from storage.

(b) *Supervised identity preserved storage.* For a handler operating under physical supervision, contract additional peanuts may be stored identity preserved and may be accounted for by disposing of the entire contents of the peanuts in each identity preserved warehouse in accordance with this part and under the supervision of a representative of the marketing association. In such case:

(1) All peanuts that are loaded into each warehouse must be inspected as farmers stock peanuts and must be loaded under the supervision of the marketing association.

(2) At the end of each day in which peanuts are placed in or removed from the warehouse, the warehouse must be sealed by a representative of the marketing association.

(3) Each warehouse seal may be removed only by a representative of the marketing association.

(4) The marketing association shall be reimbursed by the handler for all expenses of providing a representative to supervise the loading and unloading of each warehouse.

(c) *Nonsupervised identity preserved storage*—(1) *Conditions.* For a handler operating under physical supervision, contract additional peanuts may be stored identity preserved without supervision at the time of loading the

peanuts into each warehouse, but only if:

(i) All peanuts that are loaded into a warehouse are inspected prior to loading into such warehouse and a form ASCS-1007 prepared for each lot that is inspected;

(ii) The entire contents of each warehouse will be removed and disposed of in accordance with this part and under supervision of a representative of the marketing association; and

(iii) The peanuts are accounted for on a dollar value basis except that shrinkage, in the amounts provided for in paragraph (c)(2) of this section, will be allowed if the dollar value of the peanuts that are loaded out of each warehouse is less than the dollar value of the peanuts that were loaded into such warehouse.

(2) *Shrinkage.* For peanuts that are graded out and accounted for:

(i) Before February 1 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 3.5 percent for Virginia-type peanuts; and

(B) 3.0 percent for all other peanuts.

(ii) After January 31 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 4.0 percent for Virginia-type peanuts; and

(B) 3.5 percent for all other peanuts.

(3) *Records.* The handler shall maintain a copy of each form ASCS-1007 that is issued for any peanuts that are placed in nonsupervised identity preserved storage and that is issued for any peanuts that are removed from such storage.

§ 1446.502 Physical supervision of contract additional peanuts.

(a) *Supervision.* A handler who has chosen to operate under physical supervision shall make arrangements that are satisfactory to the marketing association for representatives of the marketing association to conduct onsite supervision of domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, milling, blanching, weighing, and shipping.

(b) *Final dates for scheduling supervision.* Contract additional farmers stock peanuts shall be scheduled for su-

pervision by the marketing association during the normal marketing period but not later than August 15 of the calendar year following the year in which the crop was grown, unless prior approval of a later date has been made by the marketing association.

(c) *Notifying the marketing association.* Before moving or processing any contract additional peanuts, the handler or an agent of the handler shall notify the marketing association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working days of advance notice to the marketing association so that supervision can be arranged.

(d) *Processing.* The identical peanuts identified at time of load-out as contract additional peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed under supervision of the marketing association as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identity tags before being stored and moved for crushing, exportation, or processing into peanut products to be exported. Except as otherwise authorized by the marketing association, such peanuts will be considered as having been crushed or exported only if positive lot identity has been maintained in the following manner:

(1) *Transportation.* The peanuts shall be transported from storage locations in a covered vehicle such as a truck or railroad car. The vehicle shall be sealed unless the marketing association determines that identity of the peanuts can be maintained without sealing.

(2) *Storage.* Farmers stock peanuts shall be stored in a separate building(s) or bin(s) which can be sealed or which the marketing association otherwise determines will satisfactorily maintain lot identity. Milled peanuts shall be stored in such a manner that the marketing association, under procedures issued by CCC, may make periodic inventory verification of the contract additional lots that are shown on marketing association records as being in the storage facility. The handler shall

§ 1446.503

furnish to the marketing association the name and location of the storage facilities in which the contract additional peanuts are located.

§ 1446.503 Disposition requirements under physical supervision.

(a) *Methods of disposition.* Except under the provisions of § 1446.504 of this part applicable to substitution, the identical contract additional farmers stock peanuts and milled peanuts that are shelled under supervision of the marketing association and formed into lots shall be disposed of, in accordance with the provisions of this part that are applicable to contract additional peanuts and to physical supervision, by domestic crushing or by export to an eligible country as follows:

(1) All kernels may be crushed domestically under supervision of the marketing association representative; or

(2) All kernels may be exported for crushing, if fragmented; or

(3) All kernels that meet the standards established for the domestic market under the Marketing Agreement No. 146 may be exported and the remaining kernels crushed domestically under supervision of the marketing association representative; or

(4) All of the peanuts may be exported as farmers stock peanuts, provided that such peanuts meet the standards established for the domestic market under the Marketing Agreement No. 146 and are positive lot identified; or

(5) The peanuts may be exported to an eligible country as peanut products if such products are produced domestically; or

(6) The peanuts may be exported as milled or in-shell peanuts if they meet the edible export standards established for the domestic market under the Marketing Agreement No. 146; or

(7) The peanuts may be considered exported or crushed if it is determined by CCC that such peanuts have been destroyed or otherwise made unsuitable for any commercial purpose.

(b) *Peanuts diverted.* Contract additional peanuts, or peanut products made from contract additional peanuts, that are diverted to any country other than an eligible country shall

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not be credited in the handler's favor against the handler's obligation to crush or export such peanuts.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.504 Substitution of quota and additional peanuts.

(a) *Substitution of quota peanuts which have been exported—*(1) *Farmers stock peanuts.* With prior notification to and approval of the marketing association, farmers stock quota peanuts that have been exported from the same crop, type, quality, and area may be substituted for additional peanuts that otherwise would have to be exported in accordance with this part to avoid a penalty.

(2) *Milled peanuts.* With prior notification to and approval by the marketing association, peanuts that are milled under supervision of the marketing association may be used to replace, in domestic edible use, quota peanuts that have been exported to an eligible country from the same crop, type, area, and of the same grade as recognized by the Peanut Administrative Committee (PAC) for edible quality grades. Such grades shall be established at the time the peanuts are milled and the lot is formed unless CCC directs otherwise in writing. The quota peanuts that are exported, for which substitution is requested, must have been positive lot identified and otherwise handled as additional peanuts under the supervision of the marketing association.

(b) *Use of additional peanuts for domestic edible uses prior to substitution—*(1) *General requirements.* Additional peanuts may be used for domestic edible use with prior notification and approval of the marketing association and upon presentation to the marketing association of an irrevocable letter of credit in an amount that is determined in the same manner as such handler's initial letter of credit for the quantity of peanuts that will be substituted. Such letter of credit is in addition to the letter of credit required in accordance this part as a condition for approval of contracts for additional peanuts. Such additional letter of credit for substitution shall be issued in a

form and by a bank which is acceptable to CCC.

(2) *Submitting evidence of export.* The handler subsequently shall dispose of a like amount of quota peanuts in the manner prescribed in this part for contract additional peanuts. If the quota peanuts are exported, the handler shall subsequently deliver to the marketing association satisfactory evidence that a like amount of quota peanuts of the same type and of a similar grade has been exported. Such evidence must be submitted no later than the earlier of:

(i) 30 days after the final date for export as established in accordance with this part; or

(ii) 15 days prior to the expiration of the letter of credit.

(3) *Failure to timely submit evidence of export.* If satisfactory evidence is not presented by such date determined in (b)(2) of this section, CCC may authorize the marketing association to draw against the letter of credit for the full amount of the penalty which would otherwise be due for failure to dispose of contract additional peanuts in accordance with this part.

Subpart F—Handling Contract Additional Peanuts—Nonphysical Supervision

§ 1446.601 Disposition requirements under nonphysical supervision.

(a) *Disposition requirement.* With respect to any marketing year, a handler who has selected nonphysical supervision shall account for the disposition of any contract additional peanuts acquired by such handler by providing evidence that is satisfactory to the marketing association of the quantity of peanuts by peanut type that are crushed or exported by such handler in each of the following kernel categories:

- (1) SS kernels;
- (2) SMK's; and
- (3) AO kernels.

(b) *SS kernels.* (1) For each lot of contract additional peanuts acquired by such handler for which a deduction would have been applicable for SS kernels under the applicable price support loan schedule, deduct, from the percentage of SS kernels in such lot of peanuts, a number of percentage points equal to the maximum percentage of

SS kernels that a lot of peanuts could contain without having a deduction for SS kernels under the applicable price support loan schedule and multiply the result by the total weight of the TKC content of the lot, excluding the weight of the LSK's in such lot.

(2) Determine separately, for each type of peanuts acquired by such handler, the total of the results obtained in paragraph (b)(1) of this section for all lots of contract additional peanuts acquired by such handler.

(3) For each type of peanuts acquired by such handler, multiply the result determined in paragraph (b)(2) of this section by 0.955 in order to provide an allowance for shrinkage. The result is the minimum quantity of SS kernels of peanuts of the respective type that shall be crushed or exported by such handler.

(c) *SMK and SS kernels.* (1) Determine, by type, the total of the quantity of SMK and SS kernels in the lots of contract additional peanuts acquired during the marketing year by such handler.

(2) From the total determined in paragraph (c)(1) of this section, deduct the amount determined in paragraph (b)(2) of this section.

(3) For each type of peanuts acquired by such handler, multiply the results obtained in (c)(2) of this section by 0.955. The result is the minimum combined quantity of SMK's and SS kernels (excluding the quantity of SS kernels required to be crushed or exported as determined in paragraph (b)(3) of this section) of the respective type that shall be exported or crushed by such handler.

(d) *AO kernels.* (1) Determine, by type, the total quantity of TKC in the lots of contract additional peanuts acquired during the marketing year by such handler.

(2) From the total determined in paragraph (d)(1) of this section, deduct:

(i) The amount of SS kernels determining in paragraph (b)(2) of this section; and

(ii) The combined SMK's and SS kernels determined in paragraph (c)(2) of this section.

(3) Multiply the result determined in paragraph (d)(2) of this section by 0.955.

The result is the total of the AO kernels of the respective type that shall be exported or crushed by such handler.

(e) *Substitution prohibited.* Disposition credit shall not be granted:

(1) To the obligation to export or crush SS kernels and SMK for any amount of AO kernels that may have been exported or crushed in excess of the quantity required in accordance with paragraph (d)(3) of this section.

(2) To the obligation to export or crush AO kernels for any amount of SS kernels and SMK's that may have been exported or crushed in excess of the quantity required in accordance with paragraph (c)(3) of this section.

(3) To the obligation to export or crush peanuts of a type, for a surplus amount of contract additional peanuts exported or crushed from another type.

(f) *Peanuts diverted.* Contract additional peanuts or peanut products made from contract additional peanuts diverted to any country other than eligible country shall not be credited in the handler's favor against the handler's obligation to crush or export such peanuts.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.602 Disposition credit for peanuts under nonphysical supervision.

(a) *Disposition credits.* Contract additional peanuts of the same crop year and of like type shall be disposed of in accordance with the provisions of this part. Disposition shall be by domestic crushing or by export to an eligible country. Disposition credit shall, subject to the provisions of this part, be granted for:

(1) Kernels that are crushed domestically under physical supervision of the marketing association representative; or

(2) Kernels that are exported for crushing, if fragmented before being exported; or

(3) Exported kernels that meet PAC outgoing quality standards for domestic edible use; or

(4) Peanuts that are exported as farmers stock peanuts, provided that such peanuts meet PAC incoming quality standards for Segregation 1 peanuts and are positive lot identified; or

(5) Peanuts that are exported to an eligible country as peanut products if such products are produced domestically in accordance with provisions of this part; or

(6) Peanuts that are exported as milled or in-shell peanuts if they meet PAC outgoing quality standards for domestic edible peanuts; or

(7) Peanuts that are exported as blanched peanuts; or

(8) Peanuts that are determined by the marketing association as having been destroyed or otherwise made unsuitable for any commercial purpose. In such case the peanuts shall be considered as crushed.

(b) *Requesting physical supervision of crushing for disposition credit.* Prior to the disposition date for contract additional peanuts, as provided in this part, a handler operating under the provisions of this part with respect to nonphysical supervision may request and arrange for the marketing association to supervise the crushing of SMK, SS and AO peanuts for disposition credit for the applicable kernel type by obtaining physical supervision of the peanuts under the following conditions:

(1) *Milled peanuts.* A request to change to physical supervision for crushing milled peanuts for SMK, SS or AO credit may be made at any time prior to the final disposition date for additional peanuts for the relevant crop year. Physical supervision of milled peanuts shall be provided under the provisions of this part applicable to physical supervision of milled peanuts. The marketing association may require that positive identified lots be regraded before crushing.

(2) *Farmers stock peanuts.* A request to change to physical supervision for crushing farmers stock peanuts must be made and approved prior to the peanuts being graded out of commingled storage. In order to determine the categories, by peanut type, for the kernels that are crushed, namely SS, SMK and AO kernels, physical supervision must begin at the gradeout from commingled storage and continue through the crushing of the peanuts as required in accordance with this part for a handler who chooses physical supervision for disposition of contract additional farmers stock peanuts.

(c) *Determining disposition credit.* Disposition credit for SMK, SS and AO kernels crushed under physical supervision shall be determined for farmers stock peanuts from the applicable form ASCS-1007, and for milled peanuts from the applicable form FV-184-9.

(d) *Application of crushing credits to disposition obligation—(1) Milled peanuts.* Milled peanuts that are crushed under physical supervision for disposition credit may receive credit as follows:

(i) If such peanuts meet PAC outgoing quality standards for domestic edible peanuts, disposition credit may apply pound-for-pound toward meeting the respective SMK, SS, or AO kernel obligations for the respective like peanut type and for like kernel type.

(ii) If such peanuts fail to meet PAC outgoing quality standards for domestic edible use due to aflatoxin contamination, disposition credit may apply to the SMK, SS or AO kernel obligations for the respective like peanut type and for like kernel type; except that, the percentage of such peanuts to which such credit will be allowed for each peanut type and kernel type shall not exceed the percentage of the total quantity of the respective type of peanuts that was purchased by the handler for the marketing year as contract additional peanuts.

(iii) If such peanuts fail to meet PAC outgoing quality standards for reasons other than aflatoxin contamination, disposition credit must be applied exclusively as AO kernels.

(2) *Farmers stock peanuts.* Farmers stock peanuts that are crushed under physical supervision for disposition credit may receive credit as follows:

(i) If such peanuts meet PAC incoming quality standards for Segregation 1 peanuts, disposition credit may apply pound-for-pound toward meeting the respective SMK, SS, or AO kernel obligations for the respective like peanut type and for like kernel type.

(ii) If such peanuts fail to meet PAC incoming quality standards for Segregation 1 peanuts, disposition credit may apply to the SMK, SS or AO kernel obligations for the respective like peanut type and for like kernel type; except that, the percentage of such peanuts to which such credit will be allowed for each peanut type and kernel

type shall not exceed the percentage of the total quantity of the respective type of peanuts that was purchased by the handler for the marketing year as contract additional peanuts.

(iii) If such peanuts do not meet PAC incoming quality standards for Segregation 1 peanuts for any reason other than the presence of *A. flavus* mold, disposition credit must be applied exclusively as AO kernels.

(3) *Adjusting export credit for average dollar value of farmers stock peanuts.* If CCC determines that the average dollar value of edible farmers stock peanuts graded out of commingled storage and crushed for export credit under the provisions of this section is less than the average dollar value of all like type peanuts purchased by the handler as contract additional peanuts, the amount of export credit for each kernel type determined under paragraph (b)(2) of this section shall be adjusted by multiplying each quantity for each kernel type by a factor to be determined by dividing:

(i) The average dollar value per ton of peanuts graded out of the handler's commingled storage, accounted for as set forth in this part, and crushed for export credit under the provisions of this section; by

(ii) The average dollar value per ton of all peanuts purchased by the handler as contract additional peanuts.

(e) *Blanching exception.* Notwithstanding any other provision of this part, a handler may receive credit for the pre-blanching weight of SS and SMK peanuts that are blanched for export if both the blanching and the crushing of the residue are conducted under supervision of agents of CCC or the marketing association. The maximum credit that may be received shall be:

(1) The quantity of SMK and SS kernels as shown on the FV-184-9 that is submitted for proof of export for such blanched peanuts;

(2) The quantity of the residue that is crushed under physical supervision; and

(3) The pre-blanching or "redskin" weight less the quantities in paragraphs (e)(1) and (2) of this section, to the extent of such amount that the marketing association determines is

reasonable and comparable with standard industry practices.

(f) *Export credits.* In order to receive export credit toward meeting a handler's obligation to crush or export additional peanuts such exported peanuts must meet the outgoing quality standard established for the domestic market under the Marketing Agreement No. 146. Export credit will be granted in accordance with this paragraph for any exported peanuts that meet such quality standards.

(1) *Credit for exporting SMK peanuts.* Credit for exporting SMK's of the same crop year, of like type, may be earned for:

(i) The total pounds in a lot of exported peanuts which meet or exceed U.S. Standard grade for U.S. No. 1; or

(ii) The total pounds, excluding splits as determined in paragraph (f)(2)(ii) of this section, in a lot of peanuts which meet PAC standards for:

(A) Whole kernel peanuts with splits, or

(B) No. 2 Virginia peanuts; or

(iii) The total pounds determined to be SMK's in a lot of exported in-shell peanuts which meet U.S. Standard grade for cleaned Virginia type peanuts in the shell.

(2) *Credit for exporting SS kernels.* Credits for SS kernels of the same crop year, of like type, may be earned for:

(i) The total pounds in a lot of exported peanuts which meet the U.S. Standard grade for splits; or

(ii) The total pounds, excluding SMK's as determined in paragraph (f)(1)(ii) of this section, in a lot of peanuts which meets PAC standards for:

(A) Whole kernel with splits, or

(B) No. 2 Virginia; or

(iii) The total pounds determined to be SS kernels in a lot of exported in-shell peanuts which meet U.S. Standard grade for cleaned Virginia type peanuts in the shell.

(3) *Export credits for contract additional peanuts processed into products for export.* To receive disposition credit for contract additional peanuts used in products for export, the shelled peanuts must be identified with positive lot identity tags before being moved for processing in accordance with provisions of this part. The peanuts shall be processed under supervision of the

marketing association unless the processing handler selects to process such peanuts under nonphysical supervision.

(4) *Export credits for in-shell peanuts.* With respect to peanuts exported in-shell, in accordance with instructions issued by CCC, credits may be earned for SMK, SS or AO kernels on the respective portions of the TKC of the lot that are SMK, SS or AO kernels.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.603 Disposition credit for peanuts in exported products made from quota peanuts.

A handler who has selected nonphysical supervision and who manufactures peanut products from quota peanuts may export such products to an eligible country and receive disposition credit to apply to such handler's obligation to dispose of contract additional peanuts by crushing or by exporting.

(a) *Eligible peanuts.* In order to receive such credit, the quota peanuts used in such products shall be:

(1) Of the same crop year as the contract year of the contract additional peanuts for which the obligation, to crush or export, was established.

(2) Of the same type as the contract additional peanuts to which such credit shall be applied.

(b) *Handler requirements* (1) The handler, with respect to each marketing year and each area in which such handler will apply for export credit for manufactured products, shall submit a certification to the applicable marketing association:

(i) With respect to any marketing year in which such handler intends to request disposition credit for exported products made from quota peanuts, prior to requesting such disposition credit;

(ii) On a product-by-product basis; and

(iii) Of the peanut product content of peanut products manufactured by such handler for which disposition credit will be requested.

(2) Such certification of peanut product content, as required in accordance with paragraph (b)(1) of this section, must indicate by type of peanuts, with respect to each individual product, the

respective portion of such peanut kernels that are:

- (i) SS kernels;
- (ii) SMK's;
- (iii) AO kernels.

(3) If any change is made in any peanut product formula, as certified in accordance with this section, the handler shall notify the applicable area marketing association of such change within 90 days after such change is implemented.

(c) *Disposition credit.* (1) To the extent that a handler provides satisfactory proof, to the applicable marketing association, of the export of peanut products made from quota peanuts, such handler who has complied with the provisions of paragraph (b) of this section may receive disposition credit for eligible peanuts in peanut products exported to an eligible country.

(2) Disposition credit received in accordance with paragraph (c)(1) of this section shall be prorated by type to SS kernels, SMK's and AO kernels in the same proportion as the handler certified with respect to the peanut product content in accordance with paragraph (b)(2) of this section.

(d) *Records.* Any handler who receives disposition credit under paragraph (c) of this section shall maintain records, as required in this part, to support:

(1) The accuracy of such handler's certification made in accordance with this section; and

(2) Any disposition credit that is requested by such handler in accordance with this section.

(e) *Annual review.* The marketing association or employees of TPD shall conduct an annual review of the certifications made by handlers in accordance with this section.

(f) *Inaccurate certification.* In the case of an inaccurate certification, the disposition credit shall be adjusted accordingly. Such action shall be in addition to any other remedy, including, but not limited to, any civil or criminal remedy for fraud, as may apply.

Subpart G—Penalties and Liquidated Damages

§ 1446.701 Excess marketing of quota peanuts.

A handler will be subject to a penalty for noncompliance with this part, if, as determined under this part, from any crop of peanuts, such handler markets, for domestic edible use, a larger quantity, or higher grade or quality of peanuts, than could reasonably be produced from the quantity of peanuts having the grade, kernel content, and quality of farmers stock peanuts purchased by the handler during the applicable marketing year as quota peanuts, including those peanuts purchased in accordance with the "immediate buyback" provisions of this part. In such case, the penalty will be an amount equal to 140 percent of the national average quota support rate for the applicable crop, times that quantity of farmers stock peanuts which are determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts marketed.

§ 1446.702 Peanuts ineligible for quota loan.

Any person who causes or permits peanuts that are not eligible peanuts to be pledged as collateral for a loan at the quota loan rate shall be considered to have agreed that:

(a) CCC may incur serious and substantial damage to its program to support the price of quota peanuts because such peanuts were pledged as collateral for a quota loan;

(b) The amount of such damages will be difficult, if not impossible, to ascertain exactly; and

(c) Such person shall, with respect to any ineligible peanuts placed under quota loan, pay to CCC, as liquidated damages and in addition to any penalty that is due, the difference between the quota loan rate for such peanuts and the additional loan rate that would apply to peanuts of the same type and quality, times the amount of such peanuts that were placed under loan. It is agreed that such liquidated damages

are a reasonable estimate of the probable actual damages which CCC would suffer. Such person shall pay the damages to CCC promptly upon demand in addition to penalties as may be due or assessed. Liquidated damages under this section may be reduced by CCC based upon consideration of the following factors:

- (1) Whether the person causing or permitting ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged as loan collateral;
- (2) The degree of damage or potential damage to the price support program caused by the violation;
- (3) The nature and circumstances of the violation;
- (4) The extent of the violation; and
- (5) Any other pertinent information.

§ 1446.703 Assessment of penalties against handlers.

(a) *Penalty liability.* A handler shall be subject to the penalty for a violation of any provision of this part including, but not limited to, any or all of the following violations:

- (1) Failure to register as a handler of peanuts;
- (2) Failure to examine and make entries on marketing card;
- (3) Failure to keep or make available records as required by this part;
- (4) Marketing excess quota peanuts, as set forth in this part, including any marketing of reentered contract additional peanuts or peanut products made from contract additional peanuts or any marketing of imported peanut products made from additional peanuts purchased from the inventory of CCC loan collateral peanuts;
- (5) Failure to store and account for contract additional peanuts in accordance with the requirements of this part;
- (6) Failure to export or dispose of contract additional peanuts in accordance with the requirements of this part or failure to export or crush such peanuts by the final disposition date as established in this part;
- (7) Failure to obtain supervision of, or to handle properly, contract additional peanuts in the manner required by this part;

(8) Reentering or importing contract additional peanuts or products made from such peanuts as prohibited by this part; or

(9) Failure to comply with any other provision of this part.

(b) *Amount of penalty.* Except when reduced in accordance with this part, the penalty amount for any violation of this part shall be equal to 140 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts:

- (1) Handled by an unregistered handler;
- (2) Not properly entered on the marketing card;
- (3) For which records have not been properly kept or made available;
- (4) Marketed as excess quota peanuts;
- (5) Not properly stored;
- (6) Not properly disposed of;
- (7) Not properly supervised or handled in accordance with the regulations of this part;
- (8) Imported as contract additional peanuts;
- (9) Determined by CCC to have been necessary to produce the quantity of peanut products which have been determined to have been made from contract additional peanuts, and imported and sold in the United States; or
- (10) Otherwise involved in such other violation of this part as may occur.

(c) *Notice of assessment.* A handler shall be notified in writing of the assessment of a penalty by a CCC contracting officer. Such notice shall state the basis for the assessment of the penalty, and shall advise the handler of the handler's appeal rights under this part.

(d) *Interest liability.* The person liable for payment or collection of any penalty provided for in these regulations shall be liable also for interest thereon at a rate per annum equal to the rate of interest which was charged CCC by the Treasury of the United States on the date such penalty became due. The date on which the penalty became due shall be the date on which the penalty was first assessed.

(e) *Applicability.* The provisions of this section are in addition to other

remedies provided for by this part or other provisions of law.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38331, Aug. 13, 1991; 57 FR 27145, June 18, 1992]

§ 1446.704 Reductions of penalties, reconsideration and appeals.

(a) *Reduction of penalties*—(1) *By CCC Contracting Officer.* To the extent permitted by the provisions of paragraph (a)(4) of this section, the CCC Contracting Officer may reduce the amount of penalty that is otherwise determined or assessed in accordance with this part. Such reduction may be made before the penalty is assessed or may be made upon a request for reconsideration by the handler to whom the penalty is assessed.

(2) *By Director, National Appeals Division or by the Executive Vice President, CCC.* To the extent permitted by the provisions of paragraph (a)(4) of this section, the Director, National Appeals Division, upon an appeal by the handler to whom the penalty is assessed, or the Executive Vice President, CCC, or the Executive Vice President's designee, may reduce the amount of penalty that has been assessed in accordance with this part.

(3) *Reduction criteria.* A penalty that is determined or assessed in accordance with this part may be reduced by the CCC Contracting Officer or by the Director, National Appeals Division, or the Executive Vice President, CCC, or the Executive Vice President's designee, if such person determines that:

(i) The violation for which the penalty was assessed was minor or inadvertent;

(ii) A reduction in the amount of the penalty would not impair the effective operation of the peanut program; and

(iii) The assessment of penalty was not made for failure to export contract additional peanuts.

(4) *Reduction limits.* (i) If the reduction criteria in paragraph (a)(3) of this section has been met, the CCC Contracting Officer or the Director, National Appeals Division, or the Executive Vice President, CCC, or the Executive Vice President's designee, as applicable, may reduce the penalty by such amount as such person considers appropriate (including a full reduction of the

entire penalty) after taking into account the severity of the violation and the violation history of the handler.

(ii) If one of the criteria in paragraphs (a)(3)(i) and (ii) of this section has not been satisfied and the remaining criteria has been satisfied, the penalty shall not be reduced to less than an amount which is equal to 40 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts involved in the violation.

(iii) There shall not be a limit on the amount by which an assessment of liquidated damages may be reduced by the CCC Contracting Officer or the Director, National Appeals Division or the Executive Vice President, CCC, or the Executive Vice President's designee.

(b) *Request for reconsideration.* A handler who is dissatisfied with a penalty that has been assessed against such handler by the CCC Contracting Officer pursuant to this part may file a written request for reconsideration or reduction of the penalty that has been assessed. Such request for reconsideration or reduction must be made within 15 days after the date of the notice of assessment.

(c) *Appeal.* If handler is dissatisfied with the determination of the CCC Contracting Officer with respect to a request for reconsideration or reduction of a penalty that has been assessed against such handler, the handler may appeal such determination to the Director, National Appeals Division. Any appeal of such determination of the CCC Contracting Officer must be submitted in writing to the Director, National Appeals Division, within 15 days after the date of notice of such determination by the CCC Contracting Officer. The appeal may be to contest liability for the penalty, to request that the penalty be reduced, or both. An appeal shall be conducted in accordance with the regulations set forth in part 780 of this title.

[57 FR 27145, June 18, 1992]

§ 1446.705 Statutory liens against peanuts.

(a) *Lien on peanuts.* Until the amount of any penalty which is imposed upon a handler or other person in accordance

with this part is paid, a lien shall exist in favor of the United States for the amount of the penalty. Such lien shall apply on the peanuts with respect to which such penalty is incurred and on any other peanuts purchased or otherwise acquired in the same or subsequent marketing year in which the person liable for payment of such penalty has an interest.

(b) *Debt record.* The lien specified in paragraph (a) of this section shall be considered to attach at the time the penalty is entered on the debt records which shall be maintained for this purpose by the marketing associations, unless an earlier time is prescribed by law.

(c) *List of peanut marketing penalty debts.* Each marketing association shall maintain a debt record for all handlers indicating the amounts due from each handler. This list will be available for examination upon written request to the marketing association by any interested party.

§ 1446.706 Schemes and devices.

If CCC or the marketing association, with approval of the CCC, determines that a handler has knowingly adopted any scheme or device which tends to defeat the purpose of the regulations of this part or has made any fraudulent representation, or has misrepresented any fact affecting a program determination, such handler will be subject to a penalty which shall be assessed in such manner as is determined will correct for such scheme, device, fraud, or misrepresentation.

Subpart H—Recordkeeping, Reporting and Paperwork Reduction

§ 1446.801 Recordkeeping and reporting requirements.

(a) *Persons required to keep records.* Any person involved in the peanut industry in any of the following capacities shall keep records for each such business:

(1) A person who dries farmers stock peanuts by artificial means for a producer;

(2) A handler;

(3) A warehouse operator;

(4) A common carrier of peanuts;

(5) A broker or dealer in peanuts;

(6) A processor of peanuts;

(7) A farmer engaged in the production of peanuts;

(8) An agent marketing peanuts for a producer or acquiring peanuts for a handler or marketing association; or

(9) A person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanuts products.

(b) *Handler records and reports of peanuts acquired.* As required by this section and in accordance with instructions issued by CCC, each handler shall keep records and make reports, with respect to each lot of farmers stock peanuts such handler acquires, as follows:

(1) *Inspected peanuts.* (i) If the Federal-State Inspection Service inspects a lot of peanuts, the handler shall complete a form ASCS-1007 or such other form approved by CCC or FSA and on which the following information must be entered:

(A) The name and address of the farm operator, and the State and county codes and farm number of the farm on which the peanuts were produced, if the peanuts are marketed by the producer;

(B) The handler number if the peanuts are marketed by a handler;

(C) The buying point number assigned to identify the physical location of the buying point where the peanuts were marketed;

(D) Either the name, address and handler number of the handler, or if the peanuts are accepted for loan through the marketing association, the marketing association name, number and address;

(E) The net weight of the peanuts;

(F) The quantity of peanuts marketed as either loan quota, loan additional, commercial quota, or contract additional;

(G) The date of purchase; and

(H) The amount of any penalty, assessment or claim collected.

(ii) Handlers described in paragraph (c) of this section shall cause electronic records of the data recorded on form ASCS-1007 to be generated and transmitted to FSA. The data shall be transmitted in the manner and by the time prescribed by the Director, TPD.

(2) *Noninspected peanuts.* A handler who acquires farmers stock peanuts which have not been inspected by the Federal-State Inspection Service shall complete a form ASCS-1030 or such other form approved by CCC or FSA for general use, for each lot of farmers stock peanuts acquired. The handler shall use ASCS-1030-P, Handler's Report of Purchases of Noninspected Peanuts, or such other form approved by CCC or FSA for general use, to transmit the form ASCS-1030 or other approved form to the State ASC committee in the State in which the handler's business is located or such other location or entity approved by CCC or FSA. The handler shall complete the form ASCS-1030 or other approved form to show the following:

- (i) Name and address of the seller;
- (ii) Name and address of the farm operator and the State and county codes and farm number of the farm on which the peanuts were produced, if the peanuts are marketed by the producer;
- (iii) The handler's name, address and registration number when the peanuts are purchased from another handler;
- (iv) Type of peanuts purchased;
- (v) Date of purchase;
- (vi) Quantity purchased;
- (vii) Method of determining the weight; and
- (viii) Signature of the seller and the date the seller signed the form ASCS-1030 or other approved form.

(c) *Handler certification of computer software.* Each handler who is required to coordinate records with USDA electronic records system for peanuts shall prepare and use computer software that will generate records, files, reports or other electronic information as required in accordance with paragraph (b)(1) of this section, and will transmit such records, files, reports or other electronic information in the form or format and in a timely manner as may be required by FSA or CCC. Such handler shall certify by the final date prescribed by the Director, TPD, that the handler's software meets the requirements prescribed for such software.

(d) *Handler records of resales of farmers stock peanuts.* Each handler who resells farmers stock peanuts shall keep records of:

(1) Name and address of the buyer, and if the peanuts are sold to a handler, the buyer's handler number;

(2) Date of the sale;

(3) Type of peanuts sold; and

(4) Pounds (net weight) of peanuts sold.

(e) *Handler records of peanuts shelled or milled for a producer.* The handler shall maintain records of peanuts shelled for a producer including the following information:

(1) Date of shelling or milling;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Quantity of peanuts (farmers stock basis) shelled or milled;

(5) Quantity of shelled or milled peanuts retained by the sheller; and

(6) Quantity returned to the producer.

(f) *Handler records of peanuts dried for a producer.* The handler shall maintain records of peanuts dried for a producer including the following information:

(1) State and county codes and the farm number of the farm where the peanuts were produced;

(2) Name and address of the producer; and

(3) Quantity dried as determined by the farmers stock basis weight after drying, and the date the drying was completed.

(g) *Handler records of peanuts from which LSK's or pods are removed for a producer.* The handler shall maintain records of the peanuts from which the LSK's or pods were removed for a producer if such LSK's or pods are removed in commercial quantities or, when removed with foreign material, are recoverable in commercial quantities. The records must contain the:

(1) Date of removal;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Gross weight of:

(i) Peanuts prior to removal of LSK's or pods;

(ii) Peanuts removed as LSK's;

(iii) Peanuts removed as pods;

(iv) Foreign material removed; and

(v) Peanuts remaining after removal of foreign material and LSK's or pods;

(5) Quantity of peanuts which the person performing the service retains in the form of pods and LSK's; and

(6) Quantity of peanuts returned to the producer as:

- (i) Pods;
- (ii) LSK's; and
- (iii) LSK's and pods.

(h) *Handler records of sales and disposal of peanuts.* Each handler shall maintain records of all sales or other disposal of peanuts. Such records shall show:

- (1) The date of sale or disposal of such peanuts;
- (2) The quantity of peanuts sold;
- (3) The type of peanuts sold;
- (4) The name of the purchaser;
- (5) That the peanuts were sold either as:

- (i) Farmers stock peanuts; or
- (ii) Milled peanuts;

(6) That the peanuts were sold either as:

- (i) Edible peanuts; or
- (ii) Peanuts for crushing; and

(7) Any other information which may be required by this part.

(i) *Method of keeping records.* Each handler shall maintain the records required by this part in a manner which will enable the marketing association, CCC, FSA, and other representative of the Secretary to readily reconcile the quantities, grades and qualities of all peanuts acquired and disposed of by such a handler. Records concerning the acquisition and disposal of contract additional peanuts must also be kept in a manner that allows the marketing association, CCC, FSA, or any other representative of the Secretary to readily determine whether there has been compliance with the provisions of this part.

§ 1446.802 Examination of records and reports.

The Executive Vice President, CCC, the Deputy Administrator, FSA, the Director, TPD, the State Executive Director and any person authorized by any one of such persons, and any auditor or agent of the Office of Inspector General is authorized to examine any records that such person has reason to believe are relevant to any matter pertinent to the peanut poundage quota program operated pursuant to the provisions of part 729 of this title and pro-

visions of this part. Upon request, any person required by this part to keep records shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under such person's control.

§ 1446.803 Retention of records.

Persons required to maintain records under this part shall maintain all records for a period of three years following the end of the marketing year in which the peanuts were produced. Notwithstanding the preceding sentence, records relating to contract additional peanuts for which penalties or liquidated damages have been assessed, shall be retained for 6 years following the date the assessment was made or until the conclusion of the assessment action, whichever is later and records shall be kept for such longer periods of time as may be requested in writing by CCC.

§ 1446.804 Information confidential.

All data requested and obtained by the Secretary in accordance with the provisions of this part shall be kept confidential by all employees of USDA and of the marketing association. Such data shall be released only at the discretion of the Executive Vice President, CCC, and then only to the extent that such release is not prohibited by law.

§ 1446.805 Penalty for failure to keep records and make reports.

Any person, who fails to make any report or keep any record as required under this part or who falsifies any information on any such report or record shall be subject to a penalty in accordance with § 1446.703 of this part.

§ 1446.806 Fraud by handler.

Any misrepresentation made or effectively made by a handler within or without the records or reports maintained in connection with this part shall be subject to a penalty under this part and such penalty shall be in addition to any other remedies available by law for such misrepresentation (including, but not limited to, criminal prosecution). In addition, the handler and any individual or other person involved

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with such misrepresentation, including employees of the handler, shall be liable to CCC for all costs which CCC incurs as a result of such misrepresentation, together with interest at the per annum rate which the Treasurer of the United States charged CCC on the date the misrepresentation was made.

§ 1446.807 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 1446) have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560-0006, 0560-0014 and 0560-0133.

[56 FR 38331, Aug. 13, 1991]

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program

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APPENDIX A TO PART 1464—IMPORTER ENTRY AND ASSESSMENT WORKSHEET

AUTHORITY: 7 U.S.C. 1421, 1423, 1441, 1445, 1445-1 and 1445-2; 15 U.S.C 714b, 714c.

Subpart A—Tobacco Loan Program

SOURCE: 45 FR 9253, Feb. 12, 1980, unless otherwise noted.

§ 1464.1 Administration.

(a) This program will be administered by the Tobacco and Peanuts Division, FSA, under the general direction and supervision of the Executive Vice President, CCC. The program will be carried out by cooperative marketing associations (hereinafter referred to as "associations") acting on behalf of their producer members. To obtain a price support loan, an association must enter into a loan agreement with CCC. The loan agreement will set forth terms and conditions for making price support available to producers. To the extent provided in the loan agreement, an association shall meet the eligibility requirements for price support prescribed in the Cooperative Marketing Associations Eligibility Requirements for Price Support (part 1425 of this chapter), as amended. CCC reserves the right to restrict the number of associations with which it will contract. In so doing, CCC will select such associations as it deems necessary or desirable to effectuate the purposes of the program with a maximum of efficiency and economy of operations. The names of such associations may be obtained from the Tobacco and Peanuts Division, FSA, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

(b) Each year CCC will make loans to associations. The associations in turn will make price support advances available to eligible producers either directly or through auction warehouses. The tobacco on which producers receive price support advances will serve as security for the loans. Loans made to associations will include not only the initial loan value of the tobacco, but also amounts to cover costs of receiving, processing, storing, and selling the loan tobacco, including that part of overhead costs not borne by the